

BEFORE THE DEPARTMENT OF MOTOR VEHICLES
OF THE STATE OF CALIFORNIA

3 In the Matter of the Hearing)
4 Concerning the Driving Privilege of:)
5 Abhinav Bhatnagar) File D3219816
6 at the Department of Motor Vehicles)
303 Hegenberger Road, Suite 400)
7 Oakland, CA 94621)
8 July 26, 2006; October 11, 2006)
9 _____)

10 HEARING OFFICER LEE: Counselor, the record is now
11 on. Can I have you please state your name and business
12 address?

13 MR. TAGUCHI: Yes. Good morning, Mr. Lee. My name
14 is Kevin Taguchi. My business address is 1260 B Street,
15 Suite 240, Hayward, California, 94541.

16 HEARING OFFICER LEE: Thank you, counsel. My name is
17 Leland Lee. I'm the Hearing Officer that's been assigned
18 to do this hearing today.

19 Mr. Bhatnagar?

20 MR. BHATNAGAR: Yes, sir

21 HEARING OFFICER LEE: Can I have you state your name
22 and your current address for the record?

23 MR. BHATNAGAR: Yes, sir. My name is Abhinav
24 Bhatnagar. And my current address is 36927 Papaya
25 Street, Newark, California, zip code 94560.

1 HEARING OFFICER LEE: Thank you.

2 MR. BHATNAGAR: You're welcome.

3 HEARING OFFICER LEE: Counsel, do you wish for me to
4 reiterate your client's rights?

5 MR. TAGUCHI: No. We'll waive that.

6 HEARING OFFICER LEE: Thank you. This is a hearing
7 being convened on July 26, 2006, before the Department of
8 Motor Vehicles, and we're at the Oakland Driver Safety
9 Office.

10 This hearing is concerning the suspension of the
11 driving privilege of Mr. Abhinav Bhatnagar, driver's
12 license number D3219816. The suspension is being ordered
13 pursuant to section 13353.2 of the California Vehicle
14 Code.

15 This hearing is to determine if the officer had
16 reasonable cause to believe that you were driving a motor
17 vehicle in violation of sections 23152 or 23153 of the
18 Vehicle Code.

19 MR. BHATNAGAR: Okay.

20 HEARING OFFICER LEE: Whether you were lawfully
21 arrested.

22 And whether you were driving a motor vehicle at the
23 time you had 0.08 percent or more by weight of alcohol in
24 your blood.

25 MR. BHATNAGAR: Okay.

1 HEARING OFFICER LEE: Counsel, I have to ask, do you
2 wish to stipulate to any of these issues?

3 MR. TAGUCHI: No.

4 HEARING OFFICER LEE: Let me introduce on behalf of
5 Department of Motor Vehicles the following documents for
6 identification beginning with the Age 21 and Older
7 Officer's Statement containing a total of three pages for
8 the arrest on May 20th, 2006.

9 The first page is the officer's (inaudible)
10 statement. The second page is the officer's probable
11 cause statement.

12 MR. TAGUCHI: All right. How are -- are you going to
13 mark that as one --

14 HEARING OFFICER LEE: Yes, sir.

15 MR. TAGUCHI: -- A and one B?

16 HEARING OFFICER LEE: No. I'm just going to mark all
17 three pages --

18 MR. TAGUCHI: One?

19 HEARING OFFICER LEE: -- as **Exhibit 1**.

20 MR. TAGUCHI: All right. May I take a look at the
21 originals, please?

22 HEARING OFFICER LEE: Yes. And the last page is the
23 Suspension/Revocation Order and Temporary Driver's
24 License.

25 (**Department's Exhibit No. 1** marked for

1 identification.)

2 MR. TAGUCHI: Mr. Lee, you're including this Age 21
3 and Older --

4 HEARING OFFICER LEE: Yes, sir.

5 MR. TAGUCHI: -- as part of Exhibit 1?

6 HEARING OFFICER LEE: Yes.

7 MR. TAGUCHI: Okay.

8 HEARING OFFICER LEE: The Suspension/Revocation
9 Order. Is that what we sent you?

10 MR. TAGUCHI: Yeah. I would -- well, thank you.

11 HEARING OFFICER LEE: You're welcome. Next I wish to
12 identify the Blood Test Results containing a total of
13 three pages. The first page is actual blood test
14 results. Second page is the information concerning the
15 blood test results, the blood sample for alcohol/drug
16 analysis. And the third page is the Declaration from the
17 person who drew the blood sample.

18 (**Department's Exhibit No. 2** marked for
19 identification.)

20 HEARING OFFICER LEE: They might be in a different
21 order (inaudible).

22 MR. TAGUCHI: Let me see what I've got here.

23 HEARING OFFICER LEE: Okay. And counsel, next I wish
24 to identify the four-page Arrest Report, and page one of
25 the Supplemental, page two of the Supplemental. And it

1 would just be redundant. I won't be identifying page
2 five as Supplemental since I have my own copy of the
3 driver's license.

4 MR. TAGUCHI: Can I see what you want to introduce?

5 HEARING OFFICER LEE: Yes, sir.

6 MR. TAGUCHI: Are you introducing the entire report?

7 HEARING OFFICER LEE: The entire Arrest Report. I
8 have all four pages, yes. And page -- of the
9 Supplemental page one --

10 MR. TAGUCHI: Oh, I see.

11 HEARING OFFICER LEE: -- and two.

12 MR. TAGUCHI: Okay. Okay. Okay.

13 HEARING OFFICER LEE: Identify this as **Exhibit No. 3**.
14 I don't know if I mentioned that. Six pages all
15 together.

16 (**Department's Exhibit No. 3** marked for
17 identification.)

18 HEARING OFFICER LEE: And then the Department's
19 documents as follows:

20 The driver's license record of Mr. Bhatnagar, two
21 pages, identified **Exhibit No. 4**.

22 (**Department's Exhibit No. 4** marked for
23 identification.)

24 HEARING OFFICER LEE: The Temporary License,
25 extending the Temporary License issued by the officer,

1 that's **Exhibit No. 5**.

2 (Department's **Exhibit No. 5** marked for
3 identification.)

4 HEARING OFFICER LEE: The Notice of Hearing for today
5 identified as **Exhibit No. 6**.

6 (Department's **Exhibit No. 6** marked for
7 identification.)

8 HEARING OFFICER LEE: And this document which I refer
9 to as a discovery document as Department's **Exhibit No. 7**.

10 (Department's **Exhibit No. 7** marked for
11 identification.)

12 MR. TAGUCHI: Four is the Temp License. Five is
13 what?

14 HEARING OFFICER LEE: No. Four is the driver's
15 license record of Mr. Bhatnagar.

16 MR. TAGUCHI: Oh.

17 HEARING OFFICER LEE: Five is the Temp License. Six
18 is the Notice of Hearing. Seven is the Notice of
19 Discovery.

20 At this time, counsel, before the Department proposes
21 to move these documents into evidence, I want to get the
22 testimony of Officer Ingrassia.

23 MR. TAGUCHI: Sure.

24 HEARING OFFICER LEE: Officer, can I have you please
25 state your name, badge number and enforcement agency for

1 the record?

2 OFFICER INGRASSIA: Officer Jason Ingrassia, employee
3 number 65945, and I work for Contra Costa County
4 Sheriff's Department, currently assigned to the City of
5 San Ramon, which is a contract city for the Sheriff's
6 Department.

7 HEARING OFFICER LEE: Do you promise to tell the
8 truth, the whole truth, and nothing but the truth?

9 OFFICER INGRASSIA: I do.

10 HEARING OFFICER LEE: Thank you. Officer, I'm
11 identifying **Exhibit No. 1**. Do you recognize **Exhibit**
12 **No. 1**, the Age 21 and Older Officer's Statement?

13 OFFICER INGRASSIA: Yes, I do.

14 HEARING OFFICER LEE: Did you complete this form?

15 OFFICER INGRASSIA: Yes.

16 HEARING OFFICER LEE: At the time of completion were
17 the events fresh in your mind?

18 OFFICER INGRASSIA: Yes.

19 HEARING OFFICER LEE: And to the best of your
20 knowledge, were the events depicted on **Exhibit No. 1** true
21 and correct?

22 OFFICER INGRASSIA: Yes.

23 HEARING OFFICER LEE: Officer, what are your duties
24 with the Contra Costa County Sheriff's Department in
25 contract with the San Ramon Police Department? What do

1 you do?

2 OFFICER INGRASSIA: I'm assigned to patrol duties in
3 the city of San Ramon?

4 HEARING OFFICER LEE: Approximately how long have you
5 been employed in that capacity?

6 OFFICER INGRASSIA: Been a deputy sheriff for
7 approximately three and a half years.

8 HEARING OFFICER LEE: Now, the purpose -- the reason
9 why I asked you to appear today is I want to clarify the
10 time that the blood sample was taken.

11 OFFICER INGRASSIA: Okay.

12 HEARING OFFICER LEE: I have a supplemental document.
13 However, I am not clear who completed the document. Do
14 you have any recollection of this document, this page two
15 of **Exhibit 2**, Blood Sample -- Blood Sample for Alcohol
16 Analysis?

17 OFFICER INGRASSIA: Yes. This is the evidence
18 envelope for the blood sample. And it states right here
19 the blood was drawn at approximately 2:30 in the
20 morning --

21 HEARING OFFICER LEE: Were --

22 OFFICER INGRASSIA: -- on May 20th.

23 HEARING OFFICER LEE: Were -- were this document
24 completed by you or a different officer?

25 OFFICER INGRASSIA: I completed that document.

1 HEARING OFFICER LEE: Okay. So you indicated the
2 time of the 2:30?

3 OFFICER INGRASSIA: Yes, sir.

4 HEARING OFFICER LEE: Okay. Thank you, Officer.
5 Counsel?

6 MR. TAGUCHI: Thank you. Officer, how do you
7 pronounce your last name?

8 OFFICER INGRASSIA: Ingrassia.

9 MR. TAGUCHI: Ingrassia? How long have you been --
10 how many DUI cases have you investigated?

11 OFFICER INGRASSIA: Be a guess. About 20, 25.

12 MR. TAGUCHI: Have you ever testified at a DMV
13 hearing before?

14 OFFICER INGRASSIA: Yes.

15 MR. TAGUCHI: How many times?

16 OFFICER INGRASSIA: Once.

17 MR. TAGUCHI: This is your second time?

18 OFFICER INGRASSIA: Yes, sir.

19 MR. TAGUCHI: What kind of training do you have in
20 regards to DUI investigation?

21 OFFICER INGRASSIA: Whatever we -- whatever we
22 received in the police academy, which is -- I don't
23 recall. Half a day.

24 MR. TAGUCHI: What is your normal assignment other
25 than -- so patrol is your normal assignment?

1 OFFICER INGRASSIA: Yes.

2 MR. TAGUCHI: And what types of crimes do you
3 normally investigate?

4 OFFICER INGRASSIA: Does this have anything to do
5 with a DMV hearing?

6 MR. TAGUCHI: It has to do with your experience.

7 HEARING OFFICER LEE: What, a DUI investigation?

8 OFFICER INGRASSIA: Is this -- is this within the
9 scope of the admin per se hearing?

10 MR. TAGUCHI: He -- he does the objections.

11 HEARING OFFICER LEE: Yeah. Yeah.

12 MR. TAGUCHI: You answer the questions.

13 HEARING OFFICER LEE: I normally would -- if it's out
14 of context or out of the --

15 OFFICER INGRASSIA: The scope?

16 HEARING OFFICER LEE: Yeah. But since the counsel
17 has indicated he wants to see about your training and
18 background --

19 OFFICER INGRASSIA: Okay. Go ahead. Would you
20 please repeat the question?

21 MR. TAGUCHI: What type of crimes do you normally
22 investigate?

23 OFFICER INGRASSIA: All sorts of crimes. Burglaries.
24 All kinds of thefts, drugs, alcohol-related crimes, DUIs.

25 MR. TAGUCHI: So you have no specialty in any types

1 of crimes you investigate that you're specifically
2 trained for, such as DUIs?

3 OFFICER INGRASSIA: We're -- we're trained in all
4 crimes.

5 MR. TAGUCHI: I guess my question is, are you --

6 OFFICER INGRASSIA: I have not gone to a DUI school.
7 I think -- if that's what you're asking.

8 MR. TAGUCHI: Correct.

9 OFFICER INGRASSIA: I have not.

10 MR. TAGUCHI: Okay. When did you fill out this form
11 that you testified to after the arrest?

12 OFFICER INGRASSIA: Sometime during -- you know,
13 after I brought Mr. Bhatnagar back to the police
14 department and the time it was -- the blood sample was
15 placed in its envelope, I filled it out.

16 MR. TAGUCHI: When you put -- who put the blood into
17 this envelope?

18 OFFICER INGRASSIA: The -- the phlebotomist does.
19 Mr. Young in this -- in this case.

20 MR. TAGUCHI: And Mr. Young, did he fill out any
21 portion of this envelope?

22 OFFICER INGRASSIA: Looks like he signed it. He
23 might have wrote 2:30. Doesn't look like my writing here
24 either, San Ramon. Looks like he filled out from six,
25 seven and eight. That looks like what he -- he put on --

1 filled out.

2 MR. TAGUCHI: And you filled out one through four?

3 OFFICER INGRASSIA: I definitely filled out one
4 through five and -- and then the chain of -- the chain of
5 custody, the chain of possession portion also.

6 MR. TAGUCHI: Which part of the chain of possession
7 did you --

8 OFFICER INGRASSIA: All except for his signature it
9 looks like.

10 MR. TAGUCHI: Now, where did you get this particular
11 envelope?

12 OFFICER INGRASSIA: The phlebotomists bring this.
13 They -- they -- they provide the envelope.

14 MR. TAGUCHI: And do you record the -- when you do a
15 DUI investigation and you do -- how many blood tests have
16 you done in DUI investigations?

17 OFFICER INGRASSIA: Maybe three. Three or four.

18 MR. TAGUCHI: It's not very many?

19 OFFICER INGRASSIA: No. Most people do breath.

20 MR. TAGUCHI: So you record -- it's important to
21 record the number of the -- the envelope into your police
22 report to identify the chain of custody?

23 OFFICER INGRASSIA: It's -- it's -- it is documented.

24 MR. TAGUCHI: And that's your job to document it in
25 your report?

1 OFFICER INGRASSIA: Wait. What am I documenting?

2 MR. TAGUCHI: The number. The number.

3 OFFICER INGRASSIA: Yes, I put it on there.

4 MR. TAGUCHI: And you record it accurately, of
5 course?

6 OFFICER INGRASSIA: Supposed to.

7 MR. TAGUCHI: Where were you coming from before you
8 saw Mr. Bhatnagar?

9 OFFICER INGRASSIA: That's (inaudible). I don't
10 recall.

11 MR. TAGUCHI: Were you with anybody, or were you by
12 yourself?

13 OFFICER INGRASSIA: I was -- I was driving -- I was
14 riding solo.

15 MR. TAGUCHI: You have no recollection at all where
16 you were coming from?

17 OFFICER INGRASSIA: No.

18 MR. TAGUCHI: Which directly were you driving?

19 OFFICER INGRASSIA: Westbound.

20 MR. TAGUCHI: Westbound on what street?

21 OFFICER INGRASSIA: Bollinger Canyon.

22 MR. TAGUCHI: And how long had you been on Bollinger
23 Canyon before you saw Mr. Bhatnagar?

24 OFFICER INGRASSIA: Don't recall.

25 MR. TAGUCHI: What's your best estimate?

1 OFFICER INGRASSIA: I -- it's a very long street. It
2 could have been -- could have been a long time, or I
3 could have just turned. I -- I -- I have no recollection
4 of how long I was on the street.

5 MR. TAGUCHI: You weren't sitting near the restaurant
6 there on the corner of Bollinger and what's that other
7 street there?

8 OFFICER INGRASSIA: El Balazo?

9 MR. TAGUCHI: Yes. Do you know -- do you know -- do
10 you know what restaurant I'm talking about?

11 OFFICER INGRASSIA: I do.

12 MR. TAGUCHI: It's called El Balazo.

13 OFFICER INGRASSIA: Yes.

14 MR. TAGUCHI: Are you familiar with that restaurant?

15 OFFICER INGRASSIA: Uh-hmm. Of course.

16 MR. TAGUCHI: And why are you so familiar with that
17 restaurant?

18 OFFICER INGRASSIA: Because it's one of the only
19 clubs in town.

20 MR. TAGUCHI: And do you view that as a high number
21 of people drink there and then get in their cars and
22 drive?

23 OFFICER INGRASSIA: I --

24 MR. TAGUCHI: Does it have -- does it have that
25 reputation?

1 OFFICER INGRASSIA: You -- you -- you would think it
2 does, but I don't hardly -- I hardly get any DUIs out of
3 there, so --

4 MR. TAGUCHI: Well, to you. I mean to your --

5 OFFICER INGRASSIA: No.

6 MR. TAGUCHI: -- to your knowledge --

7 OFFICER INGRASSIA: But a lot of people of drink.
8 There's a lot of alcohol being served there.

9 MR. TAGUCHI: Okay.

10 OFFICER INGRASSIA: Lot of -- lot of taxi cabs
11 (inaudible) there as well.

12 MR. TAGUCHI: Well, I'm -- I'm just asking for your,
13 you know, perception and your knowledge of the area since
14 you've been patrolling that particular area, and that's
15 your knowledge that that -- you know, that's one of the
16 few clubs in San Ramon, and it's known for people
17 drinking there and --

18 OFFICER INGRASSIA: Uh-hmm.

19 MR. TAGUCHI: -- potentially getting in their cars
20 and driving, correct? It has a reputation?

21 OFFICER INGRASSIA: No, it doesn't. It has a
22 reputation of a lot of people drinking there.

23 MR. TAGUCHI: But you don't single that particular
24 restaurant out?

25 OFFICER INGRASSIA: Single out?

1 MR. TAGUCHI: Single it out as people, you know,
2 patrons leaving that particular restaurant suspecting
3 them of driving under the influence?

4 OFFICER INGRASSIA: No.

5 MR. TAGUCHI: Did you think Mr. Bhatnagar came from
6 that restaurant?

7 OFFICER INGRASSIA: I don't recall what I was
8 thinking where he came from.

9 MR. TAGUCHI: Did you assume that he was coming from
10 that restaurant?

11 OFFICER INGRASSIA: I don't recall.

12 MR. TAGUCHI: So you were driving westbound. And
13 what first drew your attention to his vehicle?

14 OFFICER INGRASSIA: Probably when he made the U-turn
15 and I looked up and noticed there was a "no U-turn" sign
16 there.

17 MR. TAGUCHI: So you're going down Bollinger Canyon.
18 And what street did he make a U-turn in?

19 OFFICER INGRASSIA: I need to look. I think it's
20 Bishop Ranch 1. One Bishop Ranch.

21 MR. TAGUCHI: Would it help you to refresh your
22 memory by looking at your report?

23 OFFICER INGRASSIA: Uh-hmm.

24 MR. TAGUCHI: Okay.

25 OFFICER INGRASSIA: Yeah. It looks like Bishop Ranch

1 1 East is what it's called.

2 MR. TAGUCHI: What was the street before that?

3 OFFICER INGRASSIA: Before Bishop Ranch 1?

4 MR. TAGUCHI: Correct. Going --

5 OFFICER INGRASSIA: That would be Market Place.

6 MR. TAGUCHI: Market Place. Okay. And that's the
7 corner where the restaurant is and eventually the gas
8 station where you stopped Mr. Bhatnagar; is that correct?

9 OFFICER INGRASSIA: The gas -- the gas station's on
10 the corner. The restaurant's tucked -- tucked away just
11 in -- in --

12 MR. TAGUCHI: It's fairly close to that --

13 OFFICER INGRASSIA: Fairly close to the corner, yes.

14 MR. TAGUCHI: Across the street from the gas station
15 on --

16 OFFICER INGRASSIA: Uh-hmm.

17 MR. TAGUCHI: -- on Market Place?

18 OFFICER INGRASSIA: Yeah.

19 MR. TAGUCHI: Okay. This Officer's Statement, this
20 13353, do you have that copy, Mr. Lee, **Exhibit No. 1**?

21 HEARING OFFICER LEE: Page two.

22 MR. TAGUCHI: Okay. Now, where -- it looks like
23 there was a cut and paste there.

24 OFFICER INGRASSIA: Yeah.

25 MR. TAGUCHI: What's that a cut and paste from

1 OFFICER INGRASSIA: It's a cut and past from the
2 first couple paragraph of my report.

3 MR. TAGUCHI: And so you signed this under the
4 penalty of perjury that the foregoing statement is true
5 and correct?

6 OFFICER INGRASSIA: Yes.

7 MR. TAGUCHI: Okay. So would that include your
8 entire police report, or just a section of the police
9 report?

10 OFFICER INGRASSIA: Well, this particular section
11 would -- would -- or this portion is signed under penalty
12 of perjury.

13 MR. TAGUCHI: Okay. But no other aspect of your
14 police report is signed under the penalty of perjury, or
15 you don't verify it as being true and correct?

16 OFFICER INGRASSIA: Well, now that I noticed that the
17 number is wrong on the evidence kit, that was an error,
18 but I would sign under -- thinking that it was written
19 right, yes. That was -- that was -- but I signed this
20 under penalty of perjury, yes. This is true and correct
21 to the best of my knowledge.

22 MR. TAGUCHI: Okay. So it was -- you're heading down
23 westbound. How far were you behind Mr. Bhatnagar's
24 vehicle before you saw him make -- saw him make the
25 U-turn?

1 HEARING OFFICER LEE: Counsel, did you say behind his
2 vehicle?

3 MR. TAGUCHI: Yes. Yes. Can you answer the
4 question?

5 OFFICER INGRASSIA: Yeah. Yeah, I can answer the
6 question.

7 MR. TAGUCHI: Okay.

8 OFFICER INGRASSIA: I was thinking Mr. Lee was going
9 to say something.

10 MR. TAGUCHI: An objection?

11 OFFICER INGRASSIA: No. It just looked like he was
12 about to say something, and I didn't want -- I didn't
13 want to interrupt.

14 HEARING OFFICER LEE: I apologize.

15 OFFICER INGRASSIA: I was -- to the best of my
16 knowledge, I -- I was not very far. I was within 100
17 feet. I was -- I was probably close -- I was probably --
18 I probably passed the Market Place intersection, so
19 Market Place and Bishop Ranch intersection aren't too far
20 away. So I was within 100 feet I'd say.

21 MR. TAGUCHI: All right. You know, I have an
22 overhead aerial picture of the two intersections. If I
23 show you this picture, sir, so you can orient yourself.
24 This is Market Place.

25 OFFICER INGRASSIA: Okay.

1 MR. TAGUCHI: And this is Bishop --

2 OFFICER INGRASSIA: This would be Bishop Ranch here.

3 MR. TAGUCHI: Bishop Ranch East; is that correct?

4 OFFICER INGRASSIA: Looks like it, yes.

5 MR. TAGUCHI: Okay. Are you familiar, Mr. Lee,
6 this -- since you're the fact taker?

7 HEARING OFFICER LEE: Uh-hmm.

8 MR. TAGUCHI: Okay. So could you identify this
9 street for -- for Mr. Lee, please?

10 OFFICER INGRASSIA: That's Market Place.

11 MR. TAGUCHI: Okay.

12 HEARING OFFICER LEE: Market Place.

13 MR. TAGUCHI: And what is this street here?

14 OFFICER INGRASSIA: This is Bollinger.

15 MR. TAGUCHI: Okay. And which would be westbound
16 Bollinger?

17 OFFICER INGRASSIA: This is westbound.

18 MR. TAGUCHI: All right. So that directional is
19 correct based on this map?

20 OFFICER INGRASSIA: To the best of my knowledge.
21 This is westbound Bollinger, yeah.

22 MR. TAGUCHI: Okay. And then what would this street
23 be?

24 OFFICER INGRASSIA: That's Bishop Ranch 1 East.

25 MR. TAGUCHI: Okay. What type of car was

1 Mr. Bhatnagar driving?

2 OFFICER INGRASSIA: If I can remember to my report?

3 It's a silver Nissan Sentra.

4 MR. TAGUCHI: Now, where were -- okay. Now, where
5 was he when you first saw him, and where were you? If
6 you can mark -- use my pen and draw a -- draw a rectangle
7 box depicting where Mr. Bhatnagar was when you first saw
8 him.

9 OFFICER INGRASSIA: He was probably somewhere around
10 here making a U-turn.

11 MR. TAGUCHI: Okay. Just make a rectangle.

12 OFFICER INGRASSIA: So he was probably right around
13 there.

14 MR. TAGUCHI: Okay. And then where was your -- was
15 it a patrol vehicle you were driving that night?

16 OFFICER INGRASSIA: Yeah.

17 MR. TAGUCHI: Okay. Where was your -- did it have
18 a -- could you describe your vehicle, the way it looked?

19 OFFICER INGRASSIA: It's a white Ford Crown Victoria
20 fully marked, lights and decals.

21 MR. TAGUCHI: And are the lights on the --

22 OFFICER INGRASSIA: Lights are on the --

23 MR. TAGUCHI: -- hood?

24 OFFICER INGRASSIA: -- on the top, on the -- on the
25 roof.

1 MR. TAGUCHI: Like a, you know, typical police
2 cruiser?

3 OFFICER INGRASSIA: Like a -- yeah. Like a typical
4 fully marked or semi-marked --

5 MR. TAGUCHI: Okay. All right. So can you depict
6 with a circle where your police cruiser was when you
7 first saw Mr. Bhatnagar?

8 OFFICER INGRASSIA: Well, it's somewhere around here.
9 It's an estimate.

10 MR. TAGUCHI: Just your best estimate. I mean
11 obviously we're not -- you know, this is -- it's not
12 rocket science here. I mean we're just asking for your
13 best estimate.

14 Okay. So how far would you say that approximately
15 would be? This is when you first saw Mr. Bhatnagar.

16 HEARING OFFICER LEE: Counsel, didn't he earlier say
17 about approximately 100 feet?

18 MR. TAGUCHI: Yes.

19 OFFICER INGRASSIA: Okay. It's still about 100 feet.
20 Maybe even less. I don't -- I don't know.

21 MR. TAGUCHI: Okay. And was there any traffic
22 between you and Mr. Bhatnagar?

23 OFFICER INGRASSIA: Not -- not that I can recall.

24 MR. TAGUCHI: And it was pretty empty that time of
25 day?

1 OFFICER INGRASSIA: That -- between us it was fairly
2 empty, as far as I can recall.

3 MR. TAGUCHI: What's the general conditions like on
4 Bollinger Canyon at approximately one o'clock in the
5 morning?

6 OFFICER INGRASSIA: It's usually fairly light.

7 MR. TAGUCHI: Okay. It's not like five o'clock in --

8 OFFICER INGRASSIA: It's not like this.

9 MR. TAGUCHI: -- in the afternoon?

10 OFFICER INGRASSIA: Whenever -- it's not like
11 whenever this picture was taken.

12 MR. TAGUCHI: Okay. And so what was -- you're saying
13 that there is a no U-turn sign there?

14 OFFICER INGRASSIA: Yeah.

15 MR. TAGUCHI: Okay. Where is the no U-turn sign
16 located?

17 OFFICER INGRASSIA: It's going to be up on the other
18 side of the intersection where the -- the traffic light,
19 signal lights, are.

20 MR. TAGUCHI: All right. I have a photograph and I
21 have a little portion of it covered. Looking at this
22 photograph, does this photo -- what does this photograph
23 depict?

24 HEARING OFFICER LEE: Are you referring to the light?

25 OFFICER INGRASSIA: That's west -- that's eastbound

1 Bollinger.

2 MR. TAGUCHI: Eastbound Bollinger?

3 OFFICER INGRASSIA: It looks like that's the
4 eastbound traffic. Yeah. That's the opposite direction.

5 MR. TAGUCHI: And this -- and this is Bishop Ranch?

6 OFFICER INGRASSIA: Uh-hmm.

7 MR. TAGUCHI: Okay. Now, is there a possibility to
8 make a left turn in there?

9 OFFICER INGRASSIA: From -- are you talking about
10 from this picture or this picture?

11 MR. TAGUCHI: Yeah. From -- from -- if you're going
12 eastbound on Bollinger -- you're saying this is eastbound
13 direction?

14 OFFICER INGRASSIA: This is -- that's the eastbound,
15 which is not -- that -- that picture's taken from right
16 here going that direction is what I'm trying to tell you.

17 MR. TAGUCHI: Okay. Now, from Bollinger Canyon going
18 eastbound, is there a street that you can make a left on?

19 OFFICER INGRASSIA: There's nothing here.

20 MR. TAGUCHI: So you can't make a left?

21 OFFICER INGRASSIA: There is a driveway, I believe,
22 but it -- there's no street.

23 MR. TAGUCHI: Okay.

24 OFFICER INGRASSIA: It's for future --

25 MR. TAGUCHI: All right.

1 OFFICER INGRASSIA: -- construction or something.

2 MR. TAGUCHI: Can you make a U-turn from that
3 direction around?

4 OFFICER INGRASSIA: I don't know.

5 MR. TAGUCHI: Can you make a left turn from -- from
6 going eastbound into this particular area?

7 OFFICER INGRASSIA: I don't know.

8 MR. TAGUCHI: Okay. Okay. After you saw
9 Mr. Bhatnagar make a U-turn, please describe what
10 happened next.

11 OFFICER INGRASSIA: Then I -- well, I made the U-turn
12 myself and followed him and I got behind him. He made a
13 right turn into -- into here, which is Market Place.
14 Market Place has the two lanes, and he was in the left
15 one. And I followed him. I made the right turn as well,
16 so I was behind him. And then he made an abrupt turn
17 across the lanes into the gas station, which would be
18 around here.

19 MR. TAGUCHI: And which driveway of the gas station
20 did he enter?

21 OFFICER INGRASSIA: It's the first -- the first one,
22 I believe.

23 MR. TAGUCHI: Did you follow him into the first one
24 as well?

25 OFFICER INGRASSIA: Yeah.

1 MR. TAGUCHI: And where did you -- after he pulled
2 in, then where did you go?

3 OFFICER INGRASSIA: I pulled in right behind him.
4 Yeah.

5 MR. TAGUCHI: Did you activate any lights or no
6 lights?

7 OFFICER INGRASSIA: Uh-hmm. I believe I did.

8 MR. TAGUCHI: And it's your clear recollection that
9 you pulled in behind him?

10 OFFICER INGRASSIA: My clear recollection?

11 MR. TAGUCHI: Yeah.

12 OFFICER INGRASSIA: Yes.

13 MR. TAGUCHI: Okay. So when did you activate your
14 patrol lights?

15 OFFICER INGRASSIA: After I pulled in behind him.
16 After he had stopped already, actually.

17 MR. TAGUCHI: Was he in or out of the car?

18 OFFICER INGRASSIA: I believe -- I believe -- I can't
19 remember. I can't recall. I believe he was still in the
20 car.

21 MR. TAGUCHI: According to your police report, that
22 you contacted him in the -- when he was in the --
23 "Contacted Mr. Bhatnagar when he opened driver's window."
24 Is that correct?

25 OFFICER INGRASSIA: Okay. Yes.

1 MR. TAGUCHI: So does that refresh your memory as to
2 where you contacted him, or are you just relying on your
3 report?

4 OFFICER INGRASSIA: Just relying on my report.

5 MR. TAGUCHI: Okay. So you don't have an independent
6 recollection on whether or not you contacted
7 Mr. Bhatnagar out of the car, or whether or not he was in
8 the car?

9 OFFICER INGRASSIA: Well, I -- no. I -- I remember
10 now. He was in the car.

11 MR. TAGUCHI: Okay.

12 OFFICER INGRASSIA: Uh-hmm.

13 MR. TAGUCHI: Now, you testified that when you were
14 coming down Bollinger you got behind Mr. Bhatnagar; is
15 that correct?

16 OFFICER INGRASSIA: Uh-hmm.

17 MR. TAGUCHI: Is that yes?

18 OFFICER INGRASSIA: Yes.

19 MR. TAGUCHI: For the record. Okay.

20 OFFICER INGRASSIA: I'm sorry.

21 MR. TAGUCHI: Where did you -- how -- what was the
22 closest that you got behind him? Strike that question.

23 Where were you when you got say a car length behind
24 Mr. Bhatnagar?

25 OFFICER INGRASSIA: I don't recall.

1 MR. TAGUCHI: Okay. Was it on Bollinger Canyon?

2 OFFICER INGRASSIA: I don't recall.

3 MR. TAGUCHI: Okay. Did you -- when you followed
4 Mr. Bhatnagar down westbound Bollinger, what did you --
5 how did you make your turn in order to reach -- you know,
6 contact him?

7 OFFICER INGRASSIA: I didn't follow him on westbound
8 Bollinger.

9 MR. TAGUCHI: Okay. Well, you made a turn on
10 somewhere when you were going down westbound Bollinger,
11 correct?

12 OFFICER INGRASSIA: Uh-hmm.

13 MR. TAGUCHI: That's yes?

14 OFFICER INGRASSIA: Yes. Sorry.

15 MR. TAGUCHI: Okay. And where did you -- where did
16 you make that turn?

17 OFFICER INGRASSIA: Same place he did. At East --
18 Bishop Ranch East.

19 MR. TAGUCHI: Okay. Was there any type of delay in
20 making that turn for you?

21 OFFICER INGRASSIA: I don't recall.

22 MR. TAGUCHI: In your police report you indicate
23 that, "I waited for a safe time to proceed through the
24 intersection that read no U-turn."

25 OFFICER INGRASSIA: Uh-hmm.

1 MR. TAGUCHI: "I waited for a safe time to proceed
2 through the intersection and made a U-turn at the same
3 intersection."

4 OFFICER INGRASSIA: Uh-hmm.

5 MR. TAGUCHI: So that implies to me that there was
6 some period of time that you had to wait in order for you
7 to make that U-turn. Is that correct?

8 OFFICER INGRASSIA: Is that -- is that correct that
9 that implies that to you?

10 MR. TAGUCHI: Yes.

11 OFFICER INGRASSIA: I don't know. Does it?

12 MR. TAGUCHI: Well, I'm asking, is that a correct
13 assumption?

14 HEARING OFFICER LEE: Counsel, just ask him directly.
15 Did you --

16 OFFICER INGRASSIA: That's not what you're asking.
17 You're asking me if that's --

18 HEARING OFFICER LEE: Did you --

19 OFFICER INGRASSIA: -- if that's what it implies to
20 you.

21 MR. TAGUCHI: Okay.

22 OFFICER INGRASSIA: So I'm asking you.

23 MR. TAGUCHI: Okay. Well, let me ask it this way,
24 then. You said you waited for a safe time to proceed.

25 OFFICER INGRASSIA: Uh-hmm.

1 MR. TAGUCHI: How much time passed when you said, "I
2 waited for a safe time to proceed."

3 OFFICER INGRASSIA: Based on the rest of it it
4 couldn't be long, because I caught up to him before he
5 made the turn onto Bollinger. I'm sorry. Market Place.

6 MR. TAGUCHI: Well, what -- what is your best
7 estimate?

8 OFFICER INGRASSIA: A couple seconds.

9 MR. TAGUCHI: Okay. Where did you catch up to him
10 on -- on Bollinger?

11 OFFICER INGRASSIA: I don't recall where exactly.
12 This is a very small portion of the street. This is a
13 couple hundred feet.

14 MR. TAGUCHI: So you're -- how far is it from Bishop
15 to Market Place, approximately?

16 OFFICER INGRASSIA: I don't know.

17 MR. TAGUCHI: Is it approximately a couple hundred
18 feet?

19 HEARING OFFICER LEE: Counsel, he answered your
20 question.

21 MR. TAGUCHI: I don't know? I'm just --

22 HEARING OFFICER LEE: Yes.

23 MR. TAGUCHI: What's your best estimate?

24 HEARING OFFICER LEE: Counsel, he answered your
25 question.

1 MR. TAGUCHI: I can ask his best estimate, Mr. Lee.

2 HEARING OFFICER LEE: And he answered your question.
3 Move on, counsel.

4 MR. TAGUCHI: Okay. So you have no -- no independent
5 recollection about where he stopped or where you caught
6 up with him on Bollinger?

7 OFFICER INGRASSIA: I mean it's -- it's a small
8 street, sir. It's a small -- it's a very small area.

9 MR. TAGUCHI: Okay.

10 OFFICER INGRASSIA: And I caught up to him sometime
11 before he made the turn onto Market Place, so -- and if I
12 had waited a couple seconds to make the turn, it's
13 probably somewhere on the second half.

14 MR. TAGUCHI: Okay.

15 OFFICER INGRASSIA: Okay?

16 MR. TAGUCHI: Fair enough. That's good. Okay. Now,
17 where is the -- the driveway that Mr. Bhatnagar pulled in
18 that you followed him on this?

19 OFFICER INGRASSIA: I'm -- I'm not sure. Judging
20 by -- I think it may be here, but I -- I -- I don't -- I
21 don't know. I can't tell if this picture is -- I -- I --
22 I'd be guessing it was -- it's right here, but it's --
23 it's tough. It has to be right there.

24 MR. TAGUCHI: And you don't have a -- now, was he
25 stopped at one of the gas pumps when you stopped him?

1 OFFICER INGRASSIA: Yeah. He had pulled up to a gas
2 pump.

3 MR. TAGUCHI: Okay. I'd like to show you the next
4 picture. Well, I'm going to mark this as --

5 HEARING OFFICER LEE: Is it A?

6 MR. TAGUCHI: -- Driver A. Driver's B is this
7 photograph. And driver's C.

8 **(Licensee's Exhibits A, B and C marked for**
9 identification.)

10 OFFICER INGRASSIA: Okay.

11 MR. TAGUCHI: And showing you driver's C, is that a
12 fair -- do you recognize this, what's depicted in this
13 photo?

14 OFFICER INGRASSIA: Uh-hmm.

15 MR. TAGUCHI: Is that yes?

16 OFFICER INGRASSIA: I'm sorry. What was the
17 question?

18 MR. TAGUCHI: Do you recognize what's depicted in
19 this photo?

20 OFFICER INGRASSIA: Yes, sir.

21 MR. TAGUCHI: And is this the -- what do you
22 recognize this to be?

23 OFFICER INGRASSIA: Well, it looks a lot like the
24 Valero gas station where the stop occurred.

25 MR. TAGUCHI: Okay. Now, is -- based on your

1 testimony, where would Mr. Bhatnagar's Nissan Sentra have
2 stopped, and where would you have pulled up behind him
3 with your red lights on?

4 OFFICER INGRASSIA: I believe it was right where that
5 truck is, or somewhere at that pump. And my car was
6 behind it, you know, ten feet.

7 MR. TAGUCHI: Okay.

8 OFFICER INGRASSIA: Facing the same direction.

9 MR. TAGUCHI: And why did -- why did you pull over
10 Mr. Bhatnagar?

11 OFFICER INGRASSIA: Because he --

12 MR. TAGUCHI: Why did you stop him?

13 OFFICER INGRASSIA: -- made the illegal U-turn.

14 MR. TAGUCHI: Okay. And when did you activate the
15 red lights? Was it at the -- before you pulled into the
16 gas station, or after you pulled into the gas station?

17 OFFICER INGRASSIA: After.

18 MR. TAGUCHI: Is there a reason why you didn't put on
19 your red lights somewhere on Bollinger where you were
20 behind him on Bollinger?

21 OFFICER INGRASSIA: Yes.

22 MR. TAGUCHI: And what's the reason for that?

23 OFFICER INGRASSIA: Probably because I was running
24 his plate, and that takes time to come back.

25 MR. TAGUCHI: When did you get an eye on his -- his

1 plate?

2 OFFICER INGRASSIA: Somewhere in this area where --
3 before I had a chance to pull him over.

4 MR. TAGUCHI: Is there a record that the police
5 department -- or the sheriff department generates when
6 you make a request to run somebody's license?

7 OFFICER INGRASSIA: It's -- it's in our unit history,
8 yeah.

9 MR. TAGUCHI: Okay. And there's a unit history about
10 the particular stop and the times of the stop?

11 OFFICER INGRASSIA: Well, the -- there is a unit
12 history. No. There's an incident history that depicts
13 the -- the traffic stop. The plate was most likely
14 run -- if I -- if I did run it before I stopped him, it
15 wouldn't be in that incident history.

16 MR. TAGUCHI: Okay. So do you have any independent
17 recollection at all whether or not you did run his
18 license plate on the short period of time that you caught
19 up with him on Bollinger?

20 OFFICER INGRASSIA: I -- I -- I don't have any
21 recollection of it. It's just standard practice for
22 myself.

23 MR. TAGUCHI: Okay. Even though that you caught up
24 with him at the end -- at the end of the block here, and
25 then he made that -- the right turn here, you would have

1 enough time to grab his plate and start plucking into
2 your computer at that point?

3 OFFICER INGRASSIA: I -- I believe I would have
4 enough time, yes. It doesn't take very long.

5 MR. TAGUCHI: All right. And how did Mr. Bhatnagar
6 identify himself?

7 OFFICER INGRASSIA: With a driver's license that was
8 expired.

9 MR. TAGUCHI: Okay. How did you determine that his
10 driver's license was expired?

11 OFFICER INGRASSIA: I don't recall. Maybe the date
12 on it was -- had -- had passed.

13 MR. TAGUCHI: And did you later find out that it was
14 in fact valid?

15 OFFICER INGRASSIA: If I can recollect with one of
16 your exhibits at that time? I don't -- I don't --

17 MR. TAGUCHI: You don't have any recollection at all?
18 You just assume this his license was expired, or this is
19 the first time that it's come to your attention that his
20 license was in fact valid?

21 OFFICER INGRASSIA: I don't recall seeing it expired.
22 I mean I -- I remember seeing that -- that the card was
23 expired.

24 MR. TAGUCHI: Uh-hmm.

25 HEARING OFFICER LEE: Where are you going with this

1 question, counsel?

2 MR. TAGUCHI: Well, because it's also a ground -- if
3 someone's license is expired when they're driving, it's
4 also grounds for a valid arrest. So I wanted to exclude
5 that.

6 HEARING OFFICER LEE: Okay. Let me just indicate
7 here that we're -- how should I say? We're not going to
8 be focusing on that issue about other grounds for arrest.
9 We'll just stick with the 23152.

10 MR. TAGUCHI: Okay. All right. So you've made that
11 clear for the record. Okay.

12 HEARING OFFICER LEE: Yes, sir.

13 MR. TAGUCHI: All right. Then I'll just move on if
14 that's -- if that's your -- what type of -- now, when you
15 first approached Mr. Bhatnagar, what happened?

16 OFFICER INGRASSIA: When I first approached him what
17 happened?

18 MR. TAGUCHI: Yes.

19 OFFICER INGRASSIA: Can you be more specific? When I
20 first approached him?

21 MR. TAGUCHI: Yeah. When you first made contact with
22 him, what happened? I mean, hello, Mr. Bhatnagar, how
23 you doing this evening, or get out of the car, or
24 driver's license and insurance? I mean what happened?
25 Did you tell him why you pulled him over, or tell him why

1 you were stopping him or making contact with him or --

2 OFFICER INGRASSIA: I -- I don't recall the
3 conversations, you know, the words, per se.

4 MR. TAGUCHI: Did you tell him why you were stopping
5 him?

6 OFFICER INGRASSIA: I don't recall.

7 MR. TAGUCHI: Now, the area from Bollinger onto
8 Market Place, you can make a valid left turn there; is
9 that correct? From the area of westbound --

10 OFFICER INGRASSIA: Going from where?

11 MR. TAGUCHI: Going westbound Bollinger. Going
12 westbound Bollinger --

13 OFFICER INGRASSIA: Oh.

14 MR. TAGUCHI: -- down this way and making a left
15 turn, that's a valid turn, correct?

16 OFFICER INGRASSIA: Yes.

17 MR. TAGUCHI: Okay. And this is a copy of -- and
18 this is -- can I show you Exhibit No. -- I'm going to
19 mark this Exhibit --

20 HEARING OFFICER LEE: David?

21 MR. TAGUCHI: -- D, yes.

22 (**Licensee's Exhibit D** marked for identification.)

23 OFFICER INGRASSIA: Yeah. That looks like it to me,
24 yes.

25 MR. TAGUCHI: Now, was Mr. Bhatnagar cooperative with

1 you?

2 OFFICER INGRASSIA: Yes.

3 MR. TAGUCHI: All right. When you made -- first made
4 contact with him, what happened?

5 HEARING OFFICER LEE: Counsel, you asked that
6 question.

7 MR. TAGUCHI: I'm trying to get an answer. He hasn't
8 answered it.

9 HEARING OFFICER LEE: He answered he -- he answered
10 that he does not remember specifically what words he
11 spoken to Mr. Bhatnagar.

12 MR. TAGUCHI: Do you have a customary routine that
13 you would normally ask somebody?

14 OFFICER INGRASSIA: Certainly ask for an
15 identification. Then from on it could have been
16 anything.

17 MR. TAGUCHI: Did you -- at some point did you ask
18 Mr. Bhatnagar to get out of the car?

19 OFFICER INGRASSIA: Yes.

20 MR. TAGUCHI: And why did you ask him to get out of
21 the car?

22 OFFICER INGRASSIA: Because I noticed some objective
23 signs of being under the influence of alcohol.

24 MR. TAGUCHI: What did you notice?

25 OFFICER INGRASSIA: I noticed he had an odor of

1 alcohol on his breath. I noticed his eyes were red and
2 watery. I noticed --

3 MR. TAGUCHI: I see you're looking at your police
4 report. Do you need to look at your police report to
5 refresh your memory as to what objective signs you saw?

6 OFFICER INGRASSIA: Yes.

7 MR. TAGUCHI: Okay.

8 OFFICER INGRASSIA: May I continue?

9 MR. TAGUCHI: Yes, please.

10 OFFICER INGRASSIA: I noticed his speech was slightly
11 slurred. And that's -- that's why I brought him out of
12 the car to conduct a DUI investigation.

13 MR. TAGUCHI: Okay. Did you give him any field
14 sobriety tests?

15 OFFICER INGRASSIA: Yes, sir.

16 MR. TAGUCHI: And which ones did you give him?

17 OFFICER INGRASSIA: May I see the --

18 HEARING OFFICER LEE: Yes.

19 OFFICER INGRASSIA: -- the Supplement? I gave him
20 the modified position of attention, which is also called
21 the Romberg stand, finger-to-nose test, walk-and-turn
22 test, and one-legged stand test.

23 MR. TAGUCHI: Now, the DUI arrest supplemental, do
24 you take any notes at the time the person is getting --
25 at the time Mr. Bhatnagar was conducting the tests?

1 OFFICER INGRASSIA: Uh-hmm.

2 MR. TAGUCHI: Is that yes?

3 OFFICER INGRASSIA: Yes. I'm sorry. I apologize.

4 MR. TAGUCHI: And what do you do with those notes
5 afterwards?

6 OFFICER INGRASSIA: Afterwards what?

7 MR. TAGUCHI: After -- after the contact with the
8 person. After the -- what do you do with these notes
9 specifically with Mr. Bhatnagar?

10 OFFICER INGRASSIA: I save them until I can complete
11 the report, and then I usually throw them out.

12 MR. TAGUCHI: And when did you write the report after
13 the arrest?

14 OFFICER INGRASSIA: I believe I started it the next
15 night after the -- after the next shift.

16 MR. TAGUCHI: So would -- would that have been within
17 24 hours or after 24 hours?

18 OFFICER INGRASSIA: Yes, sir. It would have been
19 within 24 hours, yes.

20 MR. TAGUCHI: Okay. Now, in your -- in **Exhibit No. 1**
21 of the Department, the DS 367 form, the first one --

22 OFFICER INGRASSIA: This one?

23 MR. TAGUCHI: The first page, yes. How many times
24 have you filled this out?

25 OFFICER INGRASSIA: Well, for every DUI, so

1 approximately 20, 25.

2 MR. TAGUCHI: Okay. You indicate that at 1:08 that
3 Mr. Bhatnagar was driving the vehicle and observed by
4 yourself. Is that correct?

5 OFFICER INGRASSIA: Yes.

6 MR. TAGUCHI: Okay. And then just right below that
7 it says that you also "had reasonable cause to believe
8 the driver was driving a motor vehicle and that the
9 driver was arrested by this officer or person shown in
10 the shaded area on 5-20-06 at 1:08." So you witnessed
11 the driving at 1:08 and then also you arrest him at 1:08.

12 OFFICER INGRASSIA: Hmm.

13 MR. TAGUCHI: So based on this form and how it reads,
14 it reads that when you saw him you immediately arrested
15 him.

16 OFFICER INGRASSIA: Yeah, that's -- that's --

17 MR. TAGUCHI: Is that correct?

18 OFFICER INGRASSIA: That's what that's meaning, but
19 that -- that can't be correct.

20 MR. TAGUCHI: You have a supervisor that reviews this
21 form, correct?

22 OFFICER INGRASSIA: Yes, sir.

23 MR. TAGUCHI: And you do sign that it's true and
24 correct?

25 OFFICER INGRASSIA: Yes, sir.

1 MR. TAGUCHI: And then the blood test results, you
2 have the blood test on 5-20-06 but you don't give a time.
3 Were you there present when the blood test was given?

4 OFFICER INGRASSIA: Yes, sir.

5 MR. TAGUCHI: Okay. And what -- where did you --
6 where was the blood test taken?

7 OFFICER INGRASSIA: In the police department.

8 MR. TAGUCHI: Who takes the test? Who gives the
9 test?

10 OFFICER INGRASSIA: Phlebotomist.

11 MR. TAGUCHI: Where -- Mr. Young I would assume is
12 his name. Have you worked with Mr. Young before this
13 case?

14 OFFICER INGRASSIA: I believe this was my first blood
15 draw DUI, so I have not worked with -- I had not worked
16 with Mr. Young before this for a DUI.

17 MR. TAGUCHI: Did you want Mr. Bhatnagar to take a
18 breath test? Did you encourage him to take a breath test
19 or the blood test?

20 OFFICER INGRASSIA: I don't recall encouraging him.
21 I gave him the option.

22 MR. TAGUCHI: So where does the phlebotomist come
23 from? How do you get a hold of the phlebotomist to come
24 to the police station?

25 OFFICER INGRASSIA: We -- we ask our dispatch. They

1 do whatever they do. Page him.

2 MR. TAGUCHI: Now, who does -- do you know who
3 Mr. Young works for?

4 OFFICER INGRASSIA: I don't.

5 MR. TAGUCHI: May I see the -- your Declaration
6 there? CML. Do you know what CML stands for?

7 OFFICER INGRASSIA: In regards to what?

8 MR. TAGUCHI: In -- it says, "I'm employed by CML."

9 OFFICER INGRASSIA: No, I don't know. I don't know
10 who they work for.

11 MR. TAGUCHI: Okay. Now, this -- this Declaration,
12 do you see this, the Declaration that's been marked as an
13 exhibit?

14 OFFICER INGRASSIA: Uh-hmm.

15 MR. TAGUCHI: Did you fill any of that out?

16 OFFICER INGRASSIA: No. Doesn't look like my
17 writing.

18 MR. TAGUCHI: Did you give this to -- give this to
19 anyone?

20 OFFICER INGRASSIA: Did I give it to anyone?

21 MR. TAGUCHI: Yes.

22 OFFICER INGRASSIA: I think this becomes an
23 attachment in my report. I was given -- I was given a
24 copy of this by Mr. Young, I believe.

25 MR. TAGUCHI: Okay. So he -- he gets the Declaration

1 on his own and then gives you a copy of it, or gives you
2 the original?

3 OFFICER INGRASSIA: I -- I -- I'm not sure. I can't
4 recall.

5 MR. TAGUCHI: So were you actually present in the
6 room when the blood was being drawn by Mr. Bhatnagar in
7 the police station?

8 OFFICER INGRASSIA: Yes.

9 MR. TAGUCHI: It's Mr. Young's duty to -- to put the
10 blood sample into the folder, the -- the kit number
11 folder that is marked as **Exhibit No. 2**?

12 OFFICER INGRASSIA: They do it.

13 MR. TAGUCHI: Is it his job or your job?

14 OFFICER INGRASSIA: Sure. They do it.

15 MR. TAGUCHI: So Mr. Young did it?

16 OFFICER INGRASSIA: Yes.

17 MR. TAGUCHI: Put the blood in there?

18 OFFICER INGRASSIA: Yes.

19 MR. TAGUCHI: Okay. And who seals it?

20 OFFICER INGRASSIA: I believe he seals it.

21 MR. TAGUCHI: And what does he do with it? Does he
22 give it to you?

23 OFFICER INGRASSIA: Turns it over to me.

24 MR. TAGUCHI: All right. And then what do you do
25 with it after he turns it over to you?

1 OFFICER INGRASSIA: Put it in the refrigerator at the
2 police department.

3 MR. TAGUCHI: Okay. Now, it says "received from,"
4 and then there seems to be some kind of signature at the
5 bottom there where it says "chain of custody"?

6 OFFICER INGRASSIA: Uh-hmm.

7 MR. TAGUCHI: And so the phlebotomist signs that, or
8 the person that you received it from?

9 OFFICER INGRASSIA: Yes.

10 MR. TAGUCHI: And then you turn it over to SRPD?

11 OFFICER INGRASSIA: In its refrigerator.

12 MR. TAGUCHI: Okay. Now, it has a date of 5-20, but
13 it doesn't have the time on it.

14 OFFICER INGRASSIA: Okay.

15 MR. TAGUCHI: Correct? Do you have any independent
16 recollection of the time that, you know, you allegedly
17 received this -- this envelope? It is an envelope,
18 right?

19 OFFICER INGRASSIA: It's a -- it's a -- it's an
20 envelope, yes. I don't have any independent
21 recollection, but I can make a very educated guess based
22 on the time written on there. That it was handed to --
23 handed over to me within minutes after 2:30 in the
24 morning.

25 MR. TAGUCHI: Now, the envelope says at the top on

1 line number three, 23152, incident date 5-20, and the
2 time of -- can you read that for me? It looks -- I don't
3 know if that's a zero or a six or if that's any kind of
4 notation.

5 OFFICER INGRASSIA: It says 0130 looks like to me.

6 MR. TAGUCHI: Does that indicate it's 1:30 in the
7 morning?

8 OFFICER INGRASSIA: Uh-hmm.

9 MR. TAGUCHI: Yes?

10 OFFICER INGRASSIA: Yes.

11 MR. TAGUCHI: Okay. Now, did Mr. Bhatnagar -- did he
12 make any telephone calls in your presence with his cell
13 phone?

14 OFFICER INGRASSIA: Probably.

15 MR. TAGUCHI: Do you know normally allow people that
16 you have arrested to use their cell phone to make phone
17 calls?

18 OFFICER INGRASSIA: Yes.

19 MR. TAGUCHI: Okay. Did you witness him make phone
20 calls at the police station?

21 OFFICER INGRASSIA: I don't recall specifically, but
22 it's standard I'll let them try to call to get someone to
23 come pick them up.

24 MR. TAGUCHI: Okay. Did you have any conversation
25 with Mr. Bhatnagar regarding his ethnicity during his

1 arrest?

2 OFFICER INGRASSIA: Does that have anything to do
3 with this?

4 HEARING OFFICER LEE: Is this leading towards --

5 MR. TAGUCHI: Goes to bias. Bias.

6 HEARING OFFICER LEE: Bias?

7 OFFICER INGRASSIA: I -- I believe we had some
8 conversation, yes, but I don't recall the specifics of
9 it.

10 MR. TAGUCHI: You don't recall the -- the actual
11 specifics of the discussion about his ethnicity?

12 OFFICER INGRASSIA: I -- I don't remember the -- the
13 exact conversation, no.

14 MR. TAGUCHI: Okay. Okay. I have nothing further.
15 Thank you. Thank you.

16 HEARING OFFICER LEE: Thank you, Officer.

17 MR. TAGUCHI: You don't have any redirect for him?
18 You done?

19 HEARING OFFICER LEE: No. You did a much thorough
20 job.

21 MR. TAGUCHI: Yeah. Thanks, Mr. Lee.

22 HEARING OFFICER LEE: Thank you for your time,
23 Officer.

24 OFFICER INGRASSIA: You're welcome.

25 HEARING OFFICER LEE: And take care out there.

1 Counsel, I believe we're running up in our hour time.

2 I know I have an 11:15. Are you going to be much longer?

3 MR. TAGUCHI: Well, you know, I got a lot of doc --
4 you know --

5 HEARING OFFICER LEE: These I have to keep --

6 MR. TAGUCHI: Yes.

7 HEARING OFFICER LEE: -- since we've identified them.

8 MR. TAGUCHI: But, you know, I'm showing you this
9 right now to --

10 HEARING OFFICER LEE: But he answered --

11 MR. TAGUCHI: That nice little sign.

12 HEARING OFFICER LEE: Yeah. He indicated that this
13 was in the opposite direction.

14 MR. TAGUCHI: Yeah. But I'm going to have testimony
15 otherwise. And then also, you know, where you going to
16 make a left turn, sir? You going to make a left turn
17 into nothing?

18 HEARING OFFICER LEE: You're talking about here?

19 MR. TAGUCHI: Yeah. You see, and it's coming this
20 way. But look, where you going to make a left turn?
21 There's not even a area here to even make a U-turn. Do
22 you see that?

23 HEARING OFFICER LEE: Uh-hmm.

24 MR. TAGUCHI: I also have other things. We're having
25 the blood retested.

1 HEARING OFFICER LEE: Uh-hmm..

2 MR. TAGUCHI: And so we want to, you know, wait 'til
3 the -- the results come back as well.

4 HEARING OFFICER LEE: I'll grant that.

5 MR. TAGUCHI: And -- and we have a number of
6 documents. I'd like to give you the documents so -- for
7 the next time so, you know, if you have any objections --

8 HEARING OFFICER LEE: Okay.

9 MR. TAGUCHI: -- then I'll -- then I can know about
10 it to bring the person in.

11 HEARING OFFICER LEE: Let me mark this as **Licensee**
12 **Exhibit E**, as in Edward.

13 (**Licensee's Exhibit E** marked for identification.)

14 MR. TAGUCHI: Yeah. Why don't we -- why don't we
15 clean up the house here. E is Declaration of Mr. -- the
16 gas station guy, right?

17 HEARING OFFICER LEE: Yeah, the gas station person.

18 MR. TAGUCHI: Yeah. Now, just wait 'til you hear
19 some of the statements about, you know, being Asian
20 and --

21 HEARING OFFICER LEE: So why don't we do this.

22 MR. TAGUCHI: I have a -- I have a -- I have a
23 clean -- a clean copy for you of Mr. Ha's Dec, okay?

24 HEARING OFFICER LEE: Oh, thank you.

25 MR. TAGUCHI: And then I have a -- I have a

1 Declaration of a Laurie Garrison. Okay? Mark that as F.

2 **(Licensee's Exhibit F** marked for identification.)

3 MR. TAGUCHI: She is a person that overheard comments
4 by the officer. You know, he testified that he allowed
5 him to use his cell phone --

6 HEARING OFFICER LEE: Uh-hmm.

7 MR. TAGUCHI: -- in the presence the department, and
8 we have the person that he was talking to. At the -- at
9 the time the person was in the U.S. Air Force. Who
10 signed under the declaration of penalty of perjury, "Boy,
11 take it easy. You Asians create a lot of trouble
12 everywhere in the world and steal jobs here. We're
13 leaving now. Get going you terrorist. Come on."

14 HEARING OFFICER LEE: Okay. Counsel, let's --

15 MR. TAGUCHI: I got another one to -- he made two
16 phone calls. Another one to a Marcus Campagna. E, F, G.
17 Mark it as G. Okay? Campagna Declaration.

18 **(Licensee's Exhibit G** marked for identification.)

19 MR. TAGUCHI: And then the same thing. Okay? And
20 then here's the cell phone record. E, F, G, H.

21 HEARING OFFICER LEE: This is G?

22 MR. TAGUCHI: Yes. And H will be the cell phone
23 record that he'll testify to is, you know, when he made
24 the call and where he made the calls from. We'll lay a
25 proper foundation for that.

1 (Licensee's Exhibit H marked for identification.)

2 HEARING OFFICER LEE: Okay. Just to let you know,
3 counsel, though, how are -- if you establish that there
4 is some sort of bias going on --

5 MR. TAGUCHI: Uh-hmm.

6 HEARING OFFICER LEE: -- how are that going to rebut
7 the issues that I'm concerned about?

8 MR. TAGUCHI: Well, obviously it's the stop. I mean
9 we -- I already have proof that you can make a U-turn at
10 that intersection, number one.

11 HEARING OFFICER LEE: Well, that's --

12 MR. TAGUCHI: Number two, he's not even going to
13 testify -- he's not going to testify that he made a
14 U-turn. He's going to testify that he made a left-hand
15 turn from Bollinger right onto Market and went into the
16 gas station. And after he pulls up into the -- into
17 the -- to the gas station pump, he gets out of the car,
18 and he has a conversation -- or he sees this guy, Mr. Ha,
19 who is over there, works at the gas station. He's
20 outside smoking a cigarette.

21 HEARING OFFICER LEE: Uh-hmm.

22 MR. TAGUCHI: Or he's -- or he's sitting outside.
23 And he says that Mr. Bhatnagar was out there for at least
24 a minute to two minutes, and that this person -- and that
25 the cop comes up not behind but in front, no lights on,

1 making contact with him, saying, you know, were you over
2 there across the street at -- you know, at the bar across
3 the street. And there was another woman who was
4 intoxicated, some stranger --

5 HEARING OFFICER LEE: Uh-hmm.

6 MR. TAGUCHI: -- that was hanging out at the gas
7 station. I don't know. Have you read the statement
8 yet --

9 HEARING OFFICER LEE: Yeah.

10 MR. TAGUCHI: -- by Mr. Ha? Yeah.

11 HEARING OFFICER LEE: Okay. We'll do this. Why
12 don't we reconvene this matter so we can get at least one
13 of these persons who submitted these Declarations to
14 testify (unintelligible) in person.

15 MR. TAGUCHI: Uh-hmm. Okay.

16 HEARING OFFICER LEE: We'll wait for your retesting
17 of the blood.

18 MR. TAGUCHI: Okay.

19 HEARING OFFICER LEE: That might be (inaudible) if
20 the blood tests differently. And then we'll have more --
21 I'd like more time to get Mr. Bhatnagar's testimony.

22 MR. TAGUCHI: Very good.

23 MR. BHATNAGAR: May I say something real quick? I'm
24 sorry. I just want to --

25 HEARING OFFICER LEE: Counsel, is that okay?

1 MR. TAGUCHI: No. Will you tell me first? Can we go
2 off the record.

3 HEARING OFFICER LEE: Let's go ahead and go off
4 record. And we'll reschedule this matter in the future.

5 MR. TAGUCHI: Okay.

6 (Hearing concluded.)

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October 11, 2006

2 HEARING OFFICER LEE: We are now back on the record.

3 | Today is now October 11th, 2006. I'm Mr. Lee. I'm the

4 Hearing Officer that's been assigned to do this.

5 I have present today now Counsel Kevin Taguchi,
6 Mr. Bhatnagar.

7 MR. BHATNAGAR: Yes, sir.

8 HEARING OFFICER LEE: And counsel, you have
9 subpoenaed your witness, Mr. Ha

10 MR. HA: Yes

11 HEARING OFFICER LEE: We record all our
12 conversations.

13 MR. HA: Okay.

14 HEARING OFFICER LEE: Can I have you say your name
15 for the record?

16 MR. HA: Yes, sir. My name Richard Ha.

17 HEARING OFFICER LEE: Do you promise you will tell
18 the truth, the whole truth and nothing but the truth?

19 MB HA: Yes

20 HEARING OFFICER LEE: Thank you. G. 10

21 MR. TAGUCHI: All right. May I have a minute?

22 MR. HA: I work at the Valero Gas Station in San
23 Ramon.

24 MR. TAGUCHI: Okay. And what street is the gas
25 station on?

1 MR. HA: I think it's -- what do you mean? Its main
2 street?

3 MR. TAGUCHI: What are the streets? Yes.

4 MR. HA: Bollinger.

5 MR. TAGUCHI: Bollinger. And what is the cross
6 street?

7 MR. HA: And cross street is -- I think it's
8 (unintelligible). I forget.

9 MR. TAGUCHI: Are you a little nervous?

10 MR. HA: Yeah.

11 MR. TAGUCHI: If I can show you a picture? Does
12 this -- do you recognize what's depicted in this photo?
13 This is Bollinger Canyon.

14 MR. HA: Bollinger Canyon. And cross street is --

15 MR. TAGUCHI: Is that Market?

16 MR. HA: It's (unintelligible). For this I think --

17 MR. TAGUCHI: Is that Market?

18 MR. HA: Market?

19 MR. TAGUCHI: There's your gas station.

20 MR. HA: Yeah.

21 MR. TAGUCHI: Would it help you to look at some
22 photos to refresh your memory?

23 MR. HA: Market Place.

24 MR. TAGUCHI: How about this photo?

25 MR. HA: Market Place.

1 MR. TAGUCHI: How about this photo?

2 MR. HA: Yeah, this (unintelligible). Yeah, this --

3 MR. TAGUCHI: Bollinger and Market?

4 MR. HA: Yeah, Market Place.

5 MR. TAGUCHI: Okay.

6 MR. HA: I'm sorry.

7 MR. TAGUCHI: How long have you worked there?

8 MR. HA: You know, you understand, I'm
9 (unintelligible). You know, I'm -- I work there about
10 -- 10 months. Ten months.

11 MR. TAGUCHI: All right. So it's on the corner of
12 Market Place --

13 MR. HA: Market Place and Bollinger.

14 MR. TAGUCHI: -- and Bollinger. Okay. I'm going
15 to -- since he used this photograph to make
16 identification, I'm going to just have that marked as --

17 HEARING OFFICER LEE: Okay. I think we are on letter
18 I.

19 MR. TAGUCHI: F.

20 HEARING OFFICER LEE: I. Because I -- I got F.

21 MR. TAGUCHI: Oh, okay. All right. That's fine.

22 HEARING OFFICER LEE: F is the letter from Ms. Laurie
23 Garrison.

24 MR. TAGUCHI: Yes. Okay.

25 HEARING OFFICER LEE: So I.

1 (Licensee's Exhibit I marked for identification.)

2 MR. TAGUCHI: So this is -- so showing you what is
3 marked as A, this is Bollinger Canyon. It's a big
4 street.

5 MR. HA: So Market Place.

6 MR. TAGUCHI: Yes. And this is Market Place.

7 MR. HA: It's the gas station right there.

8 MR. TAGUCHI: And what are the -- you say you work
9 graveyard. What are the hours of your graveyard?

10 MR. HA: I work from ten o'clock until 7:00,

11 MR. TAGUCHI: Ten o'clock p.m. 'til 7:00 a.m.?

12 MR. HA: Ten p.m. to 7:00 a.m.

13 MR. TAGUCHI: Okay. So did you work last night?

14 MR. HA: Yeah, I worked last night.

15 MR. TAGUCHI: All right.

16 MR. HA: Worked last night.

17 MR. TAGUCHI: So showing you the person that's
18 sitting to my right, do you recognize him?

19 MR. HA: Yeah.

20 MR. TAGUCHI: Okay. And how do you recognize him?

21 MR. HA: Because I remember that he -- he -- he
22 took -- came there about one -- one o'clock or twelve
23 o'clock, something like that.

24 MR. TAGUCHI: Did you see him there at your gas
25 station about May 20th of this year at about one o'clock

1 in the morning?

2 MR. HA: Yeah.

3 MR. TAGUCHI: Okay. When you first -- and what were
4 you doing at the time when you first saw him? What were
5 you doing?

6 MR. HA: What -- what I'm doing?

7 MR. TAGUCHI: Yes.

8 MR. HA: I check -- I check -- on the way to the
9 restroom.

10 MR. TAGUCHI: Okay. What is your -- is English your
11 second language?

12 MR. HA: My second language.

13 MR. TAGUCHI: Okay. What's your first language?

14 MR. HA: Cantonese.

15 MR. TAGUCHI: Okay. Do you understand everything I'm
16 saying so far?

17 MR. HA: I understand, yeah. I understand.

18 MR. TAGUCHI: Okay. And what do -- what is your job
19 description at the gas station?

20 MR. HA: Cashier.

21 MR. TAGUCHI: You're the cashier?

22 MR. HA: Yeah. Yeah.

23 MR. TAGUCHI: Okay. And so when you first saw -- I'm
24 going to -- his name is Abhinav.

25 MR. HA: Yeah.

1 MR. TAGUCHI: I'm going to refer to him as Abhi.

2 MR. HA: Yeah.

3 MR. TAGUCHI: When you first saw Abhi, where did --
4 where -- you said you were going to the restroom?

5 MR. HA: Yeah.

6 MR. TAGUCHI: Okay. And where was he?

7 MR. HA: He -- he go to the -- on the way to the --
8 the last -- the cashier.

9 MR. TAGUCHI: He was on his way to the cashier?

10 MR. HA: Yeah. To pay the -- the gas.

11 MR. TAGUCHI: Okay.

12 MR. HA: Yeah.

13 MR. TAGUCHI: And did you see his car?

14 MR. HA: Yeah. I see --

15 MR. TAGUCHI: Where was his car parked?

16 MR. HA: I saw his car parked on the station number
17 two.

18 MR. TAGUCHI: Okay. Showing you in C --

19 MR. HA: So I saw his car parked right here. Right
20 here. So behind number one. So number two right here?

21 MR. TAGUCHI: Where that -- we're referring to

22 **Exhibit No. C --**

23 MR. HA: Yeah. Yeah.

24 MR. TAGUCHI: -- where the -- the car depicted in the
25 photograph is?

1 MR. HA: Yeah. Yeah.

2 MR. TAGUCHI: So he was there.

3 MR. HA: (Inaudible.)

4 MR. TAGUCHI: Okay. Where's the cashier, where you
5 usually were?

6 MR. HA: The cashier is usually here.

7 MR. TAGUCHI: Okay. Can you point out to Mr. Lee
8 where it is?

9 MR. HA: Yeah. The cashier right behind over here.

10 HEARING OFFICER LEE: Uh-hmm.

11 MR. HA: And this is the restroom. Actually, I'm not
12 go to the restroom, but I go to check the restroom.

13 Because somebody complained, I go check the restroom.

14 HEARING OFFICER LEE: Okay.

15 MR. TAGUCHI: Okay. So you're going to check the
16 restroom?

17 MR. HA: Yeah, check the restroom.

18 MR. TAGUCHI: Okay. So you were --

19 MR. HA: Because restroom, sometime it doesn't --
20 it's open, but sometime somebody, you know, lock it. So
21 somebody -- someone out to the restroom.

22 MR. TAGUCHI: Uh-hmm.

23 MR. HA: So they cannot open it and then they need
24 the key, so I need to open, yeah.

25 MR. TAGUCHI: Okay. So did you see him pull up to

1 the gas station, Mr. Abhi? Did you see him pull up
2 there, or did you see him park there?

3 MR. HA: No. I just -- I just saw him park over -- I
4 saw him park here, and I saw him go -- go to -- to the
5 cashier.

6 MR. TAGUCHI: Did you see him get out of his car?

7 MR. HA: No.

8 MR. TAGUCHI: Okay. So when you first saw him his
9 car was already parked?

10 MR. HA: Yeah.

11 MR. TAGUCHI: And he was on his way to the cashier?

12 MR. HA: Yeah.

13 MR. TAGUCHI: Okay. How many feet away was his car
14 to the cashier? Doesn't look that very -- doesn't look
15 far.

16 MR. HA: Not that far. It's from -- like from here to
17 there.

18 MR. TAGUCHI: Let's say what?

19 MR. HA: Like from this -- this one --

20 MR. TAGUCHI: This wall to this wall?

21 MR. HA: -- (inaudible). Yeah, from here to here
22 (inaudible).

23 MR. TAGUCHI: About 20 feet?

24 MR. HA: (Inaudible.) Twenty, 25, something.

25 HEARING OFFICER LEE: Twenty-five?

1 MR. HA: (Inaudible.)

2 MR. TAGUCHI: Was there any police cars behind him
3 when you first saw him?

4 MR. HA: No, I didn't see any police car.

5 MR. TAGUCHI: Was there any police car in front of
6 him when you first saw him?

7 MR. HA: I think the police car --

8 MR. TAGUCHI: When you first saw him.

9 MR. HA: I didn't see the police --

10 MR. TAGUCHI: You didn't see any police car?

11 MR. HA: No.

12 MR. TAGUCHI: Okay. So there was no -- so when you
13 first saw him he was parked there walking towards the
14 gas -- walking towards the cashier and there was no
15 police cars?

16 MR. HA: No.

17 MR. TAGUCHI: Okay. And then what did you see Abhi
18 do after you first saw him walking toward the cashier?

19 MR. HA: After?

20 MR. TAGUCHI: Yes.

21 MR. HA: I think that he talk with some lady.

22 MR. TAGUCHI: Okay.

23 MR. HA: Some girl -- some -- because the -- the
24 girls were there before he --

25 MR. TAGUCHI: The girl was there before?

1 MR. HA: And she -- and she asked me for a cigarette,
2 if I'm cashier. But I don't have the money. And that I
3 think she went out. And that I -- I heard her.

4 MR. TAGUCHI: Okay. So before --

5 MR. HA: He ask -- he ask -- she ask me for money for
6 cigarette.

7 MR. TAGUCHI: Okay. So before you saw Abhi, this
8 girl who was drunk --

9 MR. HA: Came before --

10 MR. TAGUCHI: -- came up to you?

11 MR. HA: No. Came before Abhi.

12 MR. TAGUCHI: Oh, came before Abhi and asked you
13 for -- for money for cigarettes. And you didn't get --
14 and you -- is that correct?

15 MR. HA: I say I can't because I don't have money.

16 MR. TAGUCHI: Okay.

17 MR. HA: So --

18 MR. TAGUCHI: And then -- then when you saw Abhi
19 going to the cashier --

20 MR. HA: Uh-hmm.

21 MR. TAGUCHI: -- that same drunk woman --

22 MR. HA: Yeah.

23 MR. TAGUCHI: -- came -- came up to him and asked him
24 for money?

25 MR. HA: Yeah.

1 MR. TAGUCHI: Did you hear that?

2 MR. HA: I hear that.

3 MR. TAGUCHI: Okay. And then what did Abhi say when
4 this drunk woman asked him for money?

5 MR. HA: I -- I heard it. He said he -- he
6 doesn't -- he didn't have money.

7 MR. TAGUCHI: Okay. And when he was talking, or when
8 this -- what did this girl look like?

9 MR. HA: Like one girl, right? One girl.

10 MR. TAGUCHI: Okay. And was she young?

11 MR. HA: She's about 20; 22, 20.

12 MR. TAGUCHI: Okay.

13 MR. HA: From 20 to 22.

14 MR. TAGUCHI: Okay.

15 MR. HA: Something like that.

16 MR. TAGUCHI: And she was noticeably drunk?

17 MR. HA: Yeah, she got drunk.

18 MR. TAGUCHI: Okay.

19 MR. HA: She got drunk.

20 MR. TAGUCHI: Did you notice -- did you see -- did
21 you notice if -- whether Abhi was drunk or not?

22 MR. HA: Be honest, I don't think he look bad.

23 MR. TAGUCHI: He looked okay?

24 MR. HA: (Inaudible.)

25 MR. TAGUCHI: Okay. So when he -- when the girl was

1 talking to Abhi asking him for money for cigarettes, was
2 there any police there then?

3 MR. HA: Yeah. At that time I saw the police.

4 Because -- yeah, I saw the police there. I saw one --
5 only one police --

6 MR. TAGUCHI: One -- one police?

7 MR. HA: -- parked there in front by the -- the
8 operator sign. I mean, you know, parked right here.

9 MR. TAGUCHI: Okay.

10 MR. HA: So --

11 MR. TAGUCHI: So when you first saw --

12 MR. HA: -- his car right here.

13 MR. TAGUCHI: Yeah.

14 MR. HA: His car parked -- parked right here, the
15 other side. I mean the -- the number two. Number two is
16 on this side. The police car right here, number --
17 number three. In front of the operator sign, yeah. I
18 mean right here.

19 MR. TAGUCHI: So was -- now, looking at this photo on
20 **Exhibit C**, was he in -- was he in the same driveway as
21 Abhi, or was he on the other driveway?

22 MR. HA: The other driveway.

23 MR. TAGUCHI: The other driveway?

24 MR. HA: The other driveway.

25 MR. TAGUCHI: And parked the other direct -- and

1 parked the opposite direction?

2 MR. HA: Yeah.

3 MR. TAGUCHI: Okay. Did he have his red lights on?

4 MR. HA: No, I don't think.

5 MR. TAGUCHI: No. Okay.

6 MR. HA: I don't -- I don't -- I -- actually, I don't
7 pay attention, but I don't --

8 MR. TAGUCHI: But he didn't have the twirling --

9 MR. HA: No, no.

10 MR. TAGUCHI: -- lights on or no --

11 MR. HA: No, no.

12 MR. TAGUCHI: -- red stop sign?

13 MR. HA: No, no.

14 MR. TAGUCHI: Okay. And Abhi was already out of the
15 car?

16 MR. HA: Yeah.

17 MR. TAGUCHI: Okay. So did it look like to you that
18 the police officer followed Abhi into the -- in your
19 opinion, did it look like the police officer followed
20 Abhi into the gas station?

21 MR. HA: I don't think so. Because the police, they
22 come there very often, too.

23 MR. TAGUCHI: The police come there often?

24 MR. HA: There's a bar over there.

25 MR. TAGUCHI: Okay. Like how often do they come on a

1 Saturday night when you work there?

2 MR. HA: It's every half hour. But police around
3 there.

4 MR. TAGUCHI: Yeah.

5 MR. HA: Police around there and they have --

6 MR. TAGUCHI: So it's very common that --

7 MR. HA: Very common, yeah.

8 MR. TAGUCHI: -- the police go to your gas station --

9 MR. HA: Yeah.

10 MR. TAGUCHI: -- every half hour on a Saturday night?

11 MR. HA: No, not every half hour. I mean but they
12 come around --

13 MR. TAGUCHI: They come around there?

14 MR. HA: -- around (inaudible).

15 MR. TAGUCHI: Okay.

16 MR. HA: Yeah.

17 MR. TAGUCHI: When you saw the police officer pull
18 up, Abhi was already out of the car.

19 MR. HA: Yeah.

20 MR. TAGUCHI: The officer didn't pull in -- in back
21 of him, and he had no red lights on. What did you see
22 next?

23 MR. HA: Oh, I think it's -- I think it's he ask --
24 he ask (unintelligible) you been -- been drinking,
25 something like that.

1 MR. TAGUCHI: He asked Abhi whether or not he's been
2 drinking?

3 MR. HA: Yeah.

4 MR. TAGUCHI: When Abhi was already out of the car?

5 MR. HA: Yeah.

6 MR. TAGUCHI: Did he -- did he first approach Abhi
7 when Abhi was behind the wheel of his car, or was he
8 already out of the car?

9 MR. HA: Out of the car.

10 MR. TAGUCHI: He was out of the car.

11 MR. HA: Uh-hmm.

12 MR. TAGUCHI: Where were you standing when you saw
13 the police officer pull up --

14 MR. HA: I --

15 MR. TAGUCHI: -- and ask Abhi whether or not he was
16 drinking?

17 MR. HA: I -- I stay outside right here. I standing
18 right here.

19 MR. TAGUCHI: Near the cash register booth?

20 MR. HA: Yeah. Outside.

21 MR. TAGUCHI: Out -- you were outside as well?

22 MR. HA: I was outside, yeah.

23 MR. TAGUCHI: Okay.

24 MR. HA: Because I saw the police car out and I stay
25 outside.

1 MR. TAGUCHI: Oh, I see.

2 MR. HA: I see -- I saw something going on
3 (inaudible).

4 MR. TAGUCHI: How long was Abhi there when you first
5 saw him park before the police officer even pulled up?
6 Was it seconds or minutes?

7 MR. HA: You mean --

8 MR. TAGUCHI: How long? How long was he parked there
9 before you saw the police pull up?

10 MR. HA: No. I think that he park here, and police
11 come after.

12 MR. TAGUCHI: Okay. When the -- how much after? How
13 long after?

14 MR. HA: I don't -- I don't remember exactly, but --

15 MR. TAGUCHI: What's your best estimate in minutes or
16 seconds?

17 MR. HA: Three minutes or two minutes, something like
18 that.

19 MR. TAGUCHI: Two to three minutes?

20 MR. HA: Yeah. I -- I actually -- yes.

21 MR. TAGUCHI: That's your best estimate?

22 MR. HA: Yeah.

23 MR. TAGUCHI: Okay. After you -- after Abhi said --
24 told -- after the officer asked Abhi he was drinking,
25 what did Abhi say?

1 MR. HA: I think he said yeah. I heard he said yeah,
2 I think.

3 MR. TAGUCHI: Okay. And then what happened next?

4 MR. HA: I think the police make the physical test,
5 walk.

6 MR. TAGUCHI: Walk the line?

7 MR. HA: Walk line.

8 MR. TAGUCHI: And then how did you -- did you watch
9 Abhi do --

10 MR. HA: Yeah.

11 MR. TAGUCHI: -- the walk the line?

12 MR. HA: I did.

13 MR. TAGUCHI: Did it look like he was under the
14 influence to you when he was walking the line?

15 MR. HA: He walked okay.

16 MR. TAGUCHI: He walked fine? What other test did
17 you see the police officer give him?

18 MR. HA: Blow test. He did some -- some blow test.

19 MR. TAGUCHI: A blow test?

20 MR. HA: Uh-hmm.

21 MR. TAGUCHI: What other test did you see other than
22 the walk the line and the blow test --

23 MR. HA: That's it.

24 MR. TAGUCHI: -- if you remember?

25 MR. HA: And then after that then I think that he

1 have handcuff.

2 MR. TAGUCHI: Then he handcuffed him?

3 MR. HA: Handcuff, yeah, and put in the car and
4 (inaudible). That's it.

5 MR. TAGUCHI: Okay. Had Abhi paid for some gas
6 before the police officer pulled up or no?

7 MR. HA: I don't think so.

8 MR. TAGUCHI: Okay.

9 MR. HA: He -- he went there and then the girl --

10 MR. TAGUCHI: He talked to the girl?

11 MR. HA: -- talk to the girl there, and then he go
12 out and --

13 MR. TAGUCHI: And then the police officer came?

14 MR. HA: Yeah.

15 MR. TAGUCHI: Okay. And then had he recently come to
16 you -- well, strike that.

17 Okay. I have no further questions.

18 HEARING OFFICER LEE: Thank you. Mr. Ha, when did
19 you talk to Abhi?

20 MR. HA: When?

21 HEARING OFFICER LEE: Yeah.

22 MR. TAGUCHI: Objection. Vague as to time.

23 HEARING OFFICER LEE: Did you talk to Mr. Abhi on
24 May 20th, 2006, at one o'clock in the morning?

25 MR. HA: I -- I think it after. You mean like aft --

1 after the --

2 HEARING OFFICER LEE: When did you first talk to him?

3 MR. HA: Talk -- talk to him?

4 HEARING OFFICER LEE: Yeah. Did you talk to
5 Mr. Abhi?

6 MR. HA: Before -- before the accident?

7 HEARING OFFICER LEE: Accident?

8 MR. HA: You mean before or after? After -- after
9 he -- he said that he yesterday, last night the police
10 put him in jail. They release him. And he come. He ask
11 me for a witness. But I -- I say I -- okay. Yes, that
12 okay. I -- I can see whatever, you know, I see.

13 HEARING OFFICER LEE: Okay. So on this day when you
14 see all this happening --

15 MR. HA: Uh-huh.

16 HEARING OFFICER LEE: -- you didn't talk to Mr. Abhi?

17 MR. HA: No. I don't know him.

18 HEARING OFFICER LEE: Okay.

19 MR. HA: I don't know him.

20 HEARING OFFICER LEE: Did you talk to the police
21 officer?

22 MR. HA: No. No.

23 HEARING OFFICER LEE: You didn't talk to any police
24 officer or Mr. Abhi?

25 MR. HA: No.

1 HEARING OFFICER LEE: Okay. But you did talk to the
2 girl, though?

3 MR. HA: Oh, the girl ask me for money.

4 HEARING OFFICER LEE: Okay.

5 MR. HA: She want --

6 HEARING OFFICER LEE: So that's the only person you
7 talked to?

8 MR. HA: Yeah. Yeah.

9 HEARING OFFICER LEE: Okay. Thank you, sir.

10 MR. HA: You're welcome.

11 HEARING OFFICER LEE: Any follow-up?

12 MR. TAGUCHI: No, no follow-up.

13 HEARING OFFICER LEE: Thank you, counsel. Is it okay
14 to excuse Mr. Ha so he can get some rest?

15 MR. TAGUCHI: It is.

16 HEARING OFFICER LEE: Thank you, Mr. Ha.

17 MR. HA: You're welcome.

18 HEARING OFFICER LEE: You have a nice rest.

19 MR. HA: Yeah. This is my first time, but it's okay.

20 HEARING OFFICER LEE: Okay. You don't have to say no
21 more.

22 MR. TAGUCHI: You can wait -- you can wait outside.

23 Thank you very much --

24 MR. HA: No problem.

25 MR. TAGUCHI: -- Mr. Ha.

1 MR. HA: Okay.

2 HEARING OFFICER LEE: Counsel, are we going to call
3 your next witness by phone?

4 MR. TAGUCHI: Yes.

5 HEARING OFFICER LEE: Which one do you recommend?

6 MR. TAGUCHI: Laurie Garrison.

7 HEARING OFFICER LEE: The number indicated is
8 415-233-3610?

9 MR. TAGUCHI: Yes. Is that correct?

10 MR. BHATNAGAR: Yes.

11 MR. TAGUCHI: Okay.

12 (Dialing phone. Phone ringing.)

13 MS. GARRISON: Hello?

14 HEARING OFFICER LEE: Hi. This is Leland Lee calling
15 from the Department of Motor Vehicles.

16 MS. GARRISON: Hi.

17 HEARING OFFICER LEE: Hi. I'm trying to contact
18 Laurie Garrison.

19 MS. GARRISON: Yes, this is Laurie Garrison.

20 HEARING OFFICER LEE: Hi, Ms. Garrison. We're on
21 speaker phone because we're recording our conversation.

22 MS. GARRISON: Okay. I understand.

23 HEARING OFFICER LEE: I have Attorney Taguchi and
24 Mr. Bhari [sic]?

25 MR. TAGUCHI: Bhatnagar.

1 HEARING OFFICER LEE: Bhatnagar here also.

2 MS. GARRISON: Hello?

3 HEARING OFFICER LEE: I'm here. Can you still hear
4 me?

5 MS. GARRISON: Yes, I can hear you.

6 HEARING OFFICER LEE: Okay. I have Attorney Taguchi
7 and Mr. Bhatnagar here, too.

8 MR. TAGUCHI: We're all here.

9 MS. GARRISON: Okay. I'm just saying hi.

10 HEARING OFFICER LEE: Hi.

11 MS. GARRISON: I'm aware of their presence, too.

12 HEARING OFFICER LEE: Okay. Do you promise you will
13 tell the truth, the whole truth, and nothing but the
14 truth?

15 MS. GARRISON: Yes, I do.

16 HEARING OFFICER LEE: Thank you. Counsel?

17 MS. GARRISON: You're welcome.

18 MR. TAGUCHI: Good morning, Ms. Garrison.

19 Ms. Garrison, what do you do for a living?

20 MS. GARRISON: Can you repeat that, please?

21 MR. TAGUCHI: What do you do for a living? What do
22 you do for work?

23 MS. GARRISON: Oh, associate architect. I am a
24 reserve, Air Force Reserve.

25 MR. TAGUCHI: How long have you been in the Air For

1 Reserves?

2 MS. GARRISON: Eighteen years.

3 MR. TAGUCHI: How long have you been an associate
4 architect?

5 MS. GARRISON: Three years.

6 MR. TAGUCHI: And what city do you live in?

7 MS. GARRISON: San Anselmo.

8 MR. TAGUCHI: And how old are you, approximately? I
9 know it's not polite to ask a woman.

10 MS. GARRISON: Forty-six.

11 MR. TAGUCHI: And do you --

12 MS. GARRISON: Is that funny?

13 MR. TAGUCHI: No, no.

14 MS. GARRISON: Okay.

15 MR. TAGUCHI: It's just I know it's not -- it's not
16 polite to ask a woman how old she is.

17 MS. GARRISON: Oh.

18 MR. TAGUCHI: But usually in this --

19 MS. GARRISON: Well, in this case I'll make an
20 exception.

21 MR. TAGUCHI: Yeah. Thank you. How long have you
22 known Abhi Bhatnagar?

23 MS. GARRISON: About three years. A little more.

24 MR. TAGUCHI: And what's the nature of your
25 relationship with him?

1 MS. GARRISON: We're friends. Good friends.

2 MR. TAGUCHI: Okay. And then turning your attention
3 to May 20th of this year when Abhi was arrested, did you
4 have any contact with him that evening?

5 MS. GARRISON: Yes, I did.

6 MR. TAGUCHI: And what -- how did you contact -- or
7 how did you contact each other, or who contacted who?

8 MS. GARRISON: I contacted him about 11:00 that
9 evening, and then he said he would call back, and he
10 didn't. I tried to call him, and it sounded like he
11 was -- he was getting arrested. Or -- or then he called
12 me back later and then told me that he was taking like a
13 test.

14 HEARING OFFICER LEE: Counsel, let me interrupt.

15 MS. GARRISON: And we got cut off.

16 HEARING OFFICER LEE: Ms. Garrison, let me cut you
17 off first.

18 (Off the record.)

19 HEARING OFFICER LEE: Okay. We're back on record.

20 Ms. Garrison, you may continue.

21 MS. GARRISON: Yes.

22 MR. TAGUCHI: All right. So he -- he said he'd call
23 you at 11:00. No. You talked to him at 11:00. He said
24 he would call you back. You then testified that he never
25 called you back, so then you were worried and you called

1 him?

2 MS. GARRISON: Well, I wondered what happened,
3 because he usually calls back. And that -- and it
4 sounded like -- he said he was getting confronted by an
5 officer to take a breath test or something or --

6 MR. TAGUCHI: Did he tell you where he was at the
7 time when he said he was taking a breath test?

8 MS. GARRISON: Well, the breath test, it sounded like
9 he was getting taken away later, but he was -- at the
10 time he called back it sounded like he walked the line
11 and -- and -- I don't know if that's what it was exactly.
12 But he said he did really well. And then it sounded like
13 he was being taken to is it Martinez?

14 MR. TAGUCHI: Okay. Did you -- how many times did
15 you speak to him that evening?

16 MS. GARRISON: Like twice when I called, and then a
17 third time when he called back, and that was about two
18 o'clock.

19 MR. TAGUCHI: And what did you -- were you on -- what
20 did you use to talk to him with? What I mean by that is
21 like a cell phone --

22 MS. GARRISON: Oh, yes.

23 MR. TAGUCHI: -- a land line or --

24 MS. GARRISON: My cell phone. That's the only
25 number. This number that you're calling right now.

1 MR. TAGUCHI: Okay. And how did he call you, if you
2 know?

3 MS. GARRISON: With his cell phone.

4 MR. TAGUCHI: Okay. When he talked to you -- so,
5 again, after he was taken to Martinez, what -- what was
6 first said?

7 MS. GARRISON: I don't know if he -- hmm.

8 MR. TAGUCHI: You said --

9 MS. GARRISON: Oh, we --

10 MR. TAGUCHI: You said Abhi called you around the
11 early morning hours of that -- of that day, about two
12 o'clock; is that correct?

13 MS. GARRISON: Yeah, it was 2:00 in the morning.

14 MR. TAGUCHI: And then how did he sound like?

15 MR. BHATNAGAR: She's at work.

16 MS. GARRISON: Can I -- can I get my statement?
17 Would you mind?

18 MR. TAGUCHI: No. Yeah. I don't mind at all.

19 MS. GARRISON: Okay. Thanks. Hold on.

20 (Pause on the record.)

21 MS. GARRISON: Okay. I'm back. Well, I was -- when
22 he -- I think when he was at the station. It's kind of
23 been awhile. But -- but I asked how he got in that
24 situation.

25 MR. TAGUCHI: What did he say?

1 MS. GARRISON: It sounded like he said there was
2 something wrong with his eye and it was red and his
3 contact was hurting him. And then he said something
4 about, let's see, like he was -- sorry. I'm at work
5 right now. It's kind of distracting. Well, I could hear
6 in the background this officer making a lot of
7 comments --

8 MR. TAGUCHI: What comments were --

9 MS. GARRISON: -- because it got (inaudible).

10 MR. TAGUCHI: What comments did --

11 MS. GARRISON: (Inaudible.)

12 MR. TAGUCHI: What comments stuck out in your mind
13 that you heard him saying?

14 MS. GARRISON: Well, especially when we got -- when
15 we got cut off and like I was asking him -- I really
16 wanted to know if I could help him or -- or come over or,
17 you know -- but I was just hearing a lot of stuff in the
18 background and -- and getting distracted by things like
19 take it easy and -- and talking -- this officer was
20 talking about Asian people taking jobs, and was getting
21 pretty upset.

22 And -- and I wanted to know if -- if he was being
23 arrested or whatever. And -- and I could -- the last
24 thing I heard was that like the phone was being taken
25 away, or he could -- or it was just that, "We're leaving

1 now and get in -- just get off the phone you terrorist."
2 I was like, god, what, what, you know. And he hung up
3 the phone and that was the last I heard.

4 MR. TAGUCHI: What -- what was the tone of voice that
5 the officer used that you heard when he said, "We're
6 leaving now and" --

7 MS. GARRISON: Well, I thought it was pretty violent.
8 He just -- it was kind of like a tone that I -- it was
9 making me really upset that he was -- I don't know what
10 was happening to him. Like I just thought it was pretty
11 brutal and very abusive.

12 MR. TAGUCHI: So you heard what sounded like an --
13 how did you know it was an officer?

14 MS. GARRISON: I think it sounded like he was the
15 only one -- the only other person around that area. I --
16 I couldn't tell if he was talking to someone else on a
17 police line or just talking to Abhi.

18 MR. TAGUCHI: So you heard the officer saying that
19 about the Asians taking jobs --

20 MS. GARRISON: Yeah. And --

21 MR. TAGUCHI: -- here and --

22 MS. GARRISON: Yeah. And "Get off the phone, you
23 terrorist."

24 MR. TAGUCHI: And he called him a terrorist?

25 MS. GARRISON: Yeah.

1 MR. TAGUCHI: Okay. All right. I have nothing
2 further.

3 HEARING OFFICER LEE: Thank you, counsel.

4 MS. GARRISON: It was very inappropriate. Especially
5 if I'm a reservist, I have to say something about that.
6 I think that's -- that's just scary if a police officer
7 is doing that.

8 HEARING OFFICER LEE: Ms. Garrison, so you don't know
9 whether -- who said that or not?

10 MS. GARRISON: Well, I could tell -- I thought it was
11 the officer, the only other person around.

12 HEARING OFFICER LEE: You -- you --

13 MS. GARRISON: That's the only other person I heard
14 talking.

15 HEARING OFFICER LEE: Okay. This happened at a gas
16 station, though.

17 MR. TAGUCHI: No, no, no. That's not what she
18 testified to.

19 MS. GARRISON: No. I think that's when he was at --
20 at the --

21 HEARING OFFICER LEE: Oh, so you're --

22 MS. GARRISON: Yeah. In Martinez or --

23 HEARING OFFICER LEE: Oh, this was at the detention
24 facility?

25 MS. GARRISON: When they go to the station, yeah.

1 HEARING OFFICER LEE: Oh. And why did you say it was
2 a detention facility?

3 MS. GARRISON: Well, I believe he was being arrested.

4 HEARING OFFICER LEE: Do you know why he was
5 arrested?

6 MS. GARRISON: It was something to do with a DUI or
7 making an alleged right turn.

8 HEARING OFFICER LEE: Okay. And you say you known
9 Mr. Bhatnagar for -- you call him Abhi for short, right?
10 For --

11 MS. GARRISON: It was a U-turn, right turn. Yes,
12 Abhi.

13 HEARING OFFICER LEE: Okay. You known him for about
14 three years?

15 MS. GARRISON: Yes.

16 HEARING OFFICER LEE: During these three years have
17 you seen Mr. Abhi consume any alcoholic beverages?

18 MR. TAGUCHI: That's not relevant.

19 MS. GARRISON: No, no.

20 HEARING OFFICER LEE: It's in her statement.

21 MS. GARRISON: No, not at all. I'm very surprised
22 that this was -- this was happening to him and still is
23 happening to him.

24 HEARING OFFICER LEE: But in your statement you say
25 you saw him drink at -- at most three times.

1 MS. GARRISON: Three times in my presence and --

2 HEARING OFFICER LEE: So have you seen him drink
3 alcoholic beverages in your presence, yes or no?

4 MS. GARRISON: Oh, yes. Yes. But not -- you know,
5 not excessively. Maybe one ounce. And he's not one to
6 drink.

7 HEARING OFFICER LEE: When you say he's not one to
8 drink, that mean he's not one to drink alcoholic
9 beverages?

10 MS. GARRISON: Just like maybe one ounce. I've never
11 seen him drink more than one ounce.

12 HEARING OFFICER LEE: Okay.

13 MS. GARRISON: In all of our conversations he's never
14 talked about it. He's always is very refined and -- and
15 not -- not expressed any interest in it.

16 HEARING OFFICER LEE: Okay. I thank you. Counsel?

17 MS. GARRISON: You're welcome.

18 MR. TAGUCHI: Ms. Garrison, when you were talking to
19 Abhi, did it sound like he was under the influence of any
20 alcoholic beverage when you were talking to him any time
21 that evening?

22 MS. GARRISON: No, it didn't sound like he was drunk,
23 but it sounded -- it was just late. He was tired maybe,
24 but not -- not slurring his speech for sure.

25 MR. TAGUCHI: So you -- so he wasn't slurring his

1 speech?

2 MS. GARRISON: No.

3 MR. TAGUCHI: Okay. I have nothing further.

4 HEARING OFFICER LEE: Ms. -- Ms. Garrison, how --
5 what does a person who's tired sound like?

6 MS. GARRISON: Oh, just like he needed some sleep.
7 That's it.

8 HEARING OFFICER LEE: How can -- what --

9 MS. GARRISON: I think that's pretty usual for 2:00
10 in the morning.

11 HEARING OFFICER LEE: Yeah. But what -- what clues
12 lead you in to believe that he was tired and needed some
13 sleep? I mean how does that sound? How does one sound
14 like that?

15 MS. GARRISON: Oh, that's -- that's what he sounds
16 like when he's -- when he talks to me at 1:00 or 2:00 in
17 the morning. But that's not often either, so --

18 HEARING OFFICER LEE: Yeah. Can you describe that --
19 that sound, that -- that -- that indication that would
20 lead you to believe he's sleepy?

21 MS. GARRISON: Kind of yawn. That's about it.

22 HEARING OFFICER LEE: So he was yawning throughout
23 the conversation with you?

24 MS. GARRISON: Not really, but -- no, he wasn't
25 yawning. Just kind of --

1 HEARING OFFICER LEE: But he sounded like he was
2 yawning?

3 MS. GARRISON: No, not yawning, but, you know, just
4 like --

5 HEARING OFFICER LEE: I understand. Thank you,
6 Ms. Garrison. Counsel?

7 MR. TAGUCHI: No, nothing. Nothing further. Thank
8 you very much.

9 HEARING OFFICER LEE: Thank you.

10 MS. GARRISON: (Inaudible) very, very loud around my
11 work sometimes.

12 HEARING OFFICER LEE: I understand. Thank you for
13 your time and taking time off and testifying. You're
14 free --

15 MS. GARRISON: Oh, you're welcome.

16 HEARING OFFICER LEE: You're free to go now.

17 MS. GARRISON: Okay. All right. Thanks for calling.

18 HEARING OFFICER LEE: You're welcome.

19 MS. GARRISON: Okay. Bye.

20 HEARING OFFICER LEE: Bye. Okay. Counsel?

21 MR. TAGUCHI: Ken Mark, 757-7152.

22 HEARING OFFICER LEE: Area code 510?

23 MR. TAGUCHI: Yes.

24 HEARING OFFICER LEE: Seven?

25 MR. TAGUCHI: Five seven.

1 HEARING OFFICER LEE: Five seven.

2 MR. TAGUCHI: Seven one five two.

3 HEARING OFFICER LEE: Seven one five two.

4 (Dialing phone. Phone ringing.)

5 PHONE RECORDING: The number or code you dialed is
6 incorrect. Please check the number or code and try
7 again.

8 HEARING OFFICER LEE: All right. All right. Seven
9 five seven.

10 MR. TAGUCHI: 757-7152.

11 HEARING OFFICER LEE: Seven one five two.

12 MR. BHATNAGAR: Five three.

13 MR. TAGUCHI: Seven five three. Sorry.

14 HEARING OFFICER LEE: 757-7153.

15 (Dialing phone. Phone ringing.)

16 HEARING OFFICER LEE: Ken Mark?

17 MR. TAGUCHI: No. I didn't --

18 HEARING OFFICER LEE: Yeah.

19 MR. BHATNAGAR: Ken Mark.

20 MR. MARK: Hello?

21 HEARING OFFICER LEE: Hi. This is the Department of
22 Motor Vehicles, Oakland Driver Safety Office, calling for
23 Mr. Ken Mark.

24 MR. MARK: Yeah. Speaking.

25 HEARING OFFICER LEE: Hi, Mr. Mark. We're recording

1 our conversation. That's why we're on speaker phone.

2 MR. MARK: Yes.

3 HEARING OFFICER LEE: I have Attorney Taguchi and
4 Mr. Bhatnagar here.

5 MR. MARK: Yes.

6 HEARING OFFICER LEE: Do you promise you will tell
7 the truth, the whole truth and nothing but the truth?

8 MR. MARK: I do.

9 HEARING OFFICER LEE: Okay. Can I have you state
10 your name for the record?

11 MR. MARK: Yeah. It's Kenneth Mark.

12 HEARING OFFICER LEE: And counsel, do you want to
13 give a brief voir dire?

14 MR. TAGUCHI: Sure. Mr. Mark, what do you do for a
15 living, sir?

16 MR. MARK: I'm a forensic toxicologist. I own and
17 operate Bay Area Forensic Laboratory in Hayward.

18 MR. TAGUCHI: And how long have you owned and
19 operated Bay Area Forensic Lab?

20 MR. MARK: Approximately what, 16, 17 years. Since
21 1989.

22 MR. TAGUCHI: What is your education in regards to
23 forensic science?

24 MR. MARK: I have a bachelors degree in chemistry
25 from University of California. I have completed a one-

1 week course as a forensic alcohol supervisor. The course
2 was approved by Department of Health Services and given
3 by California Department of Justice. And allowed me to
4 take and pass the state licensing exam as a forensic
5 alcohol supervisor.

6 MR. TAGUCHI: What type of experience do you have as
7 a forensic alcohol supervisor?

8 MR. MARK: Say that again?

9 MR. TAGUCHI: What kind of experience do you have?

10 MR. MARK: My most relevant experience is that I work
11 for the County of San Mateo Sheriff's Forensic Laboratory
12 where I was a Supervising Toxicologist. I was the person
13 who was in charge of the alcohol testing program. I
14 authored the methods that we're using for blood, breath
15 and urine testing. And I was called to testify by the
16 prosecution, by the D.A.'s Office, on approximately 800
17 cases.

18 I left San Mateo County in 1989, set up Bay Area
19 Forensic Laboratory. After about a year it was licensed
20 as a forensic alcohol laboratory by Department of Health
21 Services. And in the capacity of owning and operating
22 that laboratory, I testified additionally another 900
23 cases and primarily at the behest of the defense. And
24 that's in forensic toxicology, primarily analysis and
25 interpretation of alcohol. And I've also testified and

1 qualified over 1,000 times at DMV APS hearings.

2 MR. TAGUCHI: At this time I'll --

3 HEARING OFFICER LEE: Yes.

4 MR. TAGUCHI: -- move him as an expert in forensic --

5 HEARING OFFICER LEE: Toxicol --

6 MR. TAGUCHI: -- alcohol toxicology.

7 HEARING OFFICER LEE: Okay. The Department will

8 recognize Mr. Mark as an expert in forensic alcohol

9 toxicology.

10 MR. TAGUCHI: Mr. Mark, turning your attention to the
11 case of Abhi Bhatnagar, have you been asked to render any
12 opinions in regards to his case?

13 MR. MARK: Yes.

14 MR. TAGUCHI: Okay. What documents have you looked
15 at in order to arrive at your conclusion?

16 MR. MARK: Okay. My conclusion is not based solely
17 on documents, but the documents that I did review were
18 the DMV discovery, which was the CHP -- or the Arrest
19 Report and the DMV DS 367 and the probable cause
20 statement.

21 MR. TAGUCHI: Okay. What other factors did you take
22 into consideration in regards to any opinion -- any
23 opinion that he will be rendering in this matter?

24 MR. MARK: I was apprised of the testimony that was
25 going to be given by the Licensee, and my opinion was

1 based very much on that testimony.

2 MR. TAGUCHI: So the state -- you rely on the
3 statement of Mr. Bhatnagar?

4 MR. MARK: The statement that he apprised me he would
5 be testifying to in this hearing.

6 MR. TAGUCHI: Okay. And then so what are your
7 opinions in regarding to Mr. Bhatnagar's case?

8 MR. MARK: Okay. Well, first of all, my opinion is
9 that he would have been less than a .08 at the time that
10 he was driving, and that was -- the traffic stop was at
11 1:08 a.m. And the basis of the opinion is that I was
12 advised he was going to be testifying that his drinking
13 consisted of a marguerita and a Bud Lite. The marguerita
14 being of an undefined size, but the total drink that he
15 consumed that evening was a Bud Lite and the marguerita.

16 And that the marguerita was consumed nominally over
17 roughly a 20-minute period ending somewhere around 12:45.
18 The traffic stop being 1:08, that there would be roughly
19 a 20-minute, perhaps 30-minute interval between the time
20 of the last drink and the time of the driving. And that
21 there was a dinner, just, you know, a salad, dessert,
22 vegetables, a main course, likely a fish.

23 And based on that, my opinion is that very little of
24 the marguerita would have been absorbed by the time of
25 the traffic stop at 1:08 if it was consumed on a meal.

1 And since the only contribution, a Bud Lite, would be --
2 would be roughly a .02 percent, my opinion is that he
3 would not be substantially higher than a .02 at the time
4 that he was driving.

5 MR. TAGUCHI: Now, did you review the toxicologist's
6 report submitted by the DMV in this matter?

7 MR. MARK: I did see the report by I believe it was
8 Contra Costa Crime Lab. Bear with me. I'm on a sidewalk
9 in Boston, and so I'm flipping through the pages trying
10 to --

11 HEARING OFFICER LEE: You're very busy.

12 MR. MARK: My shelf is an area underneath a fire
13 hydrant on the wall of a building, so it doesn't make for
14 an ideal desk. Yes. I'm looking at Forensic Services
15 Division, Contra Costa Office of the Sheriff, Report of
16 Laboratory Examination, and the reported results being a
17 .09 percent.

18 MR. TAGUCHI: Are you -- do you know when the blood
19 sample was drawn?

20 MR. MARK: Based on their alcohol report, it does not
21 indicate a time of draw. And I believe that the space
22 that is on the DS 367, which is the space where it would
23 normally be filled in, was not present on the alcohol
24 report. I mean on the -- the DS 367. I believe that
25 it's referenced somewhere in the report, but not in any

1 of the sworn documents.

2 MR. TAGUCHI: So in this DS 367 there's absolutely no
3 indication as to the time the blood sample was drawn; is
4 that correct?

5 MR. MARK: That's correct.

6 MR. TAGUCHI: And I guess I can't show you this blood
7 sample for alcohol drug analysis either since you are
8 not --

9 HEARING OFFICER LEE: We did get -- we did get
10 testimony from Officer Ingrassia.

11 MR. MARK: Okay. Bear with me for a second here.
12 You can probably hear the siren in the background, so I
13 can't hear anything.

14 HEARING OFFICER LEE: Counsel, if we got testimony
15 from Deputy Ingrassia, you can indicate that.

16 MR. MARK: I think they're gone. Okay. Go ahead.

17 HEARING OFFICER LEE: We're still confirming. Hold
18 on.

19 MR. MARK: What was that?

20 HEARING OFFICER LEE: We're -- we're processing the
21 information now. Stand by.

22 MR. MARK: Just a second. Hold on. Okay. Was there
23 a question pending?

24 MR. TAGUCHI: No, there was no question pending other
25 than --

1 MR. MARK: Okay. Okay.

2 MR. TAGUCHI: There's no indication -- did you see
3 any indication in the main body of the police report
4 about what time the blood test occurred?

5 MR. MARK: I'll have to take a quick look at that.
6 You want to hold? I do not see any.

7 MR. TAGUCHI: Interesting. I don't see any either.

8 HEARING OFFICER LEE: The officer testified to that
9 last time.

10 MR. TAGUCHI: What did he testify to?

11 HEARING OFFICER LEE: Two thirty based on that report
12 you're looking at.

13 MR. MARK: So, actually, the only reference is on --
14 I don't know. Does DMV have the Arrest Report including
15 the field sobriety tests? Specifically I'm looking in
16 the lower right-hand corner it says page two of eight.

17 HEARING OFFICER LEE: Yes, we have that.

18 MR. MARK: The answer is yes?

19 HEARING OFFICER LEE: Yes.

20 MR. MARK: Okay. Yeah. There's an indication on
21 that where blood was drawn at 2:30 a.m., 0230.

22 MR. TAGUCHI: Based on your analysis with the result
23 shown of a .09, would that confirm to your opinion that
24 that'd be the accurate -- or that would be reasonable to
25 assume?

1 MR. MARK: I have no reason to disbelieve the alcohol
2 at the time of the draw. But based on the drinking
3 profile, that would not reflect the blood alcohol at the
4 time of driving. My opinion would remain that it would
5 have been substantially less than a .08. Likely as low
6 as a .02 at the time he was actually driving at 1:08.

7 MR. TAGUCHI: And that's based on a -- that he
8 finished that marguerita at 12:45 a.m. that same -- that
9 same early morning hour?

10 MR. MARK: Yes.

11 MR. TAGUCHI: All right. Thank you very much. I
12 have nothing further.

13 HEARING OFFICER LEE: Thank you, counsel. Mr. Mark,
14 would your opinion change if the time of the Bud Lite was
15 given more information? What if we were to assume that
16 the Bud Lite was a 40-ounce Bud Lite?

17 MR. MARK: Let's see. Forty ounce, my opinion would
18 change as far as what the likely blood alcohol level
19 would be. It would not change my opinion as to whether
20 or not he would have been a .08 or greater.

21 HEARING OFFICER LEE: So your opinion would have
22 changed that he would still be less than .08?

23 MR. MARK: No, that would not change. If he had --
24 if he had a 40-ounce, then it would have been probably a
25 .06 percent.

1 HEARING OFFICER LEE: Okay.

2 MR. TAGUCHI: The ultimate -- the ultimate question
3 of whether he was .08 or greater, the answer remains the
4 same.

5 HEARING OFFICER LEE: Okay. If instead it was a 40-
6 ouncer it was -- what if this was a 12-ounce one?

7 MR. MARK: That was what my original opinion was
8 based on was a .02 based on a 12-ounce.

9 HEARING OFFICER LEE: So he would have been .02 at
10 the time of driving?

11 MR. MARK: Yes.

12 HEARING OFFICER LEE: And you're saying that he would
13 have absorbed .07 from 1:08 a.m. to 2:30 a.m.?

14 MR. MARK: Yes.

15 HEARING OFFICER LEE: Okay. So if it was a 40-ounce
16 it would have been a .06?

17 MR. MARK: Yes.

18 HEARING OFFICER LEE: If it was a 60-ounce what would
19 it have been?

20 MR. MARK: Well, first of all, before I answer it,
21 I've never heard of a 50-ounce beer. But a 50-ounce, he
22 would --

23 HEARING OFFICER LEE: No, no, no. The question was
24 60, six zero.

25 MR. MARK: Sixty, six zero?

1 HEARING OFFICER LEE: Yes.

2 MR. MARK: My opinion is if he had absorbed a 60-
3 ounce, then he probably would have been approximately a
4 .09 percent.

5 HEARING OFFICER LEE: Okay. Would your opinions also
6 change if you were given a preliminary alcohol screening
7 test information?

8 MR. MARK: Only if it was deemed that the result was
9 reliable. Meaning that there's evidence that it was a
10 properly administered test on a properly calibrated
11 device and that --

12 HEARING OFFICER LEE: So you -- so you wouldn't base
13 any opinion without that information?

14 MR. MARK: No. Because it's not -- not reliable
15 information until it's --

16 HEARING OFFICER LEE: But -- but you're telling me
17 you're basing an opinion an unknown information? You
18 don't know the determined size of the marguerita. That's
19 unknown. But you're willing to base an opinion on that?

20 MR. MARK: Well, my opinion changed, as -- as you
21 pointed out. You said -- you changed the size of the
22 beer, which would cause the marguerita to be smaller and
23 it would have caused the net rise to be smaller. So it
24 was subject to change if the drink sizes were defined
25 differently. If you were to tell me that there was going

1 to be evidence that the PAS device was working properly,
2 it was properly administered, and the person was
3 competent, then I would change my opinion.

4 HEARING OFFICER LEE: Okay. Thank you. Thank you,
5 Mr. Mark. Counsel?

6 MR. TAGUCHI: Nothing further.

7 HEARING OFFICER LEE: Thank you, sir.

8 MR. MARK: Thank you.

9 HEARING OFFICER LEE: You're welcome.

10 MR. MARK: Have a good day. Bye-bye.

11 HEARING OFFICER LEE: Bye-bye.

12 MR. TAGUCHI: We're going to submit the document the
13 Declaration of Marcus Campagna. I think you have that.

14 HEARING OFFICER LEE: Yes. I have that as **Licensee**
15 **Exhibit G**, as in George.

16 MR. TAGUCHI: And I'm going to go ahead and my client
17 is going to testify.

18 HEARING OFFICER LEE: Mr. Bhatnagar?

19 MR. BHATNAGAR: Yes.

20 HEARING OFFICER LEE: Do you promise you will tell
21 the truth, the whole truth and nothing but the truth?

22 MR. BHATNAGAR: Yes, sir.

23 HEARING OFFICER LEE: Thank you.

24 MR. TAGUCHI: All right. Mr. -- I'm going to sit
25 over here. Mr. Bhatnagar, how old are you, sir?

1 MR. BHATNAGAR: I'm 30 years old.

2 MR. TAGUCHI: And what city do you live in?

3 MR. BHATNAGAR: Newark.

4 MR. TAGUCHI: What do you do for a living?

5 MR. BHATNAGAR: I'm trying to go to school right now
6 and right now I don't have a job. But I -- I worked in
7 restaurant business.

8 MR. TAGUCHI: All right. What's your education?

9 MR. BHATNAGAR: I'm very close to getting to AA
10 degree.

11 MR. TAGUCHI: Okay. Turning your attention to the
12 evening of May 19th in the evening, can you tell me
13 who -- where were you at?

14 MR. BHATNAGAR: On May 19th I'd gone to see
15 Mr. Marcus Campagna.

16 MR. TAGUCHI: And who is Marcus Campagna?

17 MR. BHATNAGAR: Marcus Campagna, I -- I know him
18 briefly through another friend, Mike, who had worked
19 briefly in restaurant business. And he also is in
20 restaurant business. And I had gone to meet him to find
21 a job, you know, as a manager, and he had some options he
22 was telling me.

23 MR. TAGUCHI: Okay. Were you with anybody else that
24 evening?

25 MR. BHATNAGAR: Yes, sir. I was --

1 MR. TAGUCHI: Who was that?

2 MR. BHATNAGAR: I was with his friend, his -- I
3 believe she's like a sister, Ms. Lydia. I don't remember
4 her last name, but her first name is Lydia.

5 MR. TAGUCHI: Where were you that -- where did you
6 three go that evening?

7 MR. BHATNAGAR: We went to a restaurant and we were
8 talking about job scenarios. And I was telling him that
9 I'm trying to finish school and if I hope I can get a job
10 because I really need a job real bad.

11 MR. TAGUCHI: Okay.

12 MR. BHATNAGAR: And I'd be grateful.

13 MR. TAGUCHI: What restaurant were you at?

14 MR. BHATNAGAR: It was -- it was like an American and
15 Italian restaurant mix.

16 MR. TAGUCHI: In what city?

17 MR. BHATNAGAR: It was Pleasant -- Pleasant Hill, I
18 think, sir.

19 MR. TAGUCHI: Okay. Did you have anything alcoholic
20 to drink that evening?

21 MR. BHATNAGAR: I'm sorry, sir?

22 MR. TAGUCHI: Did you have anything of an -- did you
23 have alcoholic beverage that evening?

24 MR. BHATNAGAR: Yes, sir.

25 MR. TAGUCHI: And what alcoholic beverage did you

1 drink?

2 MR. BHATNAGAR: I had a beer and a marguerita.

3 MR. TAGUCHI: Okay. And what type of beer did you
4 have?

5 MR. BHATNAGAR: Beer was Bud Lite. Could be
6 Budweiser.

7 MR. TAGUCHI: What time did you start -- what time
8 did you first have a drink that evening?

9 MR. BHATNAGAR: I don't drink usually, but I start
10 around 11:45, something like that, or twelve o'clock.
11 Close to something like that. Eleven thirty. I'm not
12 sure the exact time. Around 11:30, 11:45 I start.

13 MR. TAGUCHI: Did you have anything of an alcoholic
14 nature any time that day other than that evening?

15 MR. BHATNAGAR: No. I have a lot of cough syrup
16 because my sore throat. That's all I remember. I have a
17 lot of cough syrup that day.

18 MR. TAGUCHI: so what -- what time did you first --
19 did you have the marguerita first or the Bud Lite first?

20 MR. BHATNAGAR: No. I had the Bud Lite first.

21 MR. TAGUCHI: And what size was that Bud Lite?

22 MR. BHATNAGAR: It was a regular bottle.

23 MR. TAGUCHI: It was a 12-ounce bottle?

24 MR. BHATNAGAR: Yeah, a 12-ounce bottle.

25 MR. TAGUCHI: And what time did you start drinking

1 that and what time did you finish that?

2 MR. BHATNAGAR: I believe I started -- I don't even
3 remember the exact time. Around 11:45 p.m., 11:30. But
4 I was eating, you know. I had a big dinner and salad
5 and --

6 MR. TAGUCHI: What else did you eat that evening?

7 MR. BHATNAGAR: I had a salad. I had a salmon. I
8 believe it was fish, salmon or something, but it was a
9 fish dinner. And I had a dessert.

10 MR. TAGUCHI: So after you finished your -- your beer
11 and then you said you had a marguerita?

12 MR. BHATNAGAR: Yes.

13 MR. TAGUCHI: What size was the marguerita?

14 MR. BHATNAGAR: It's -- you know, like I only drink
15 occasionally. I'm just guessing. It's like it was
16 like -- like how they serve in the glass, you know, in
17 restaurants and bar.

18 MR. TAGUCHI: What's your best approximation in
19 ounces?

20 MR. BHATNAGAR: Okay. I'm really bad, but I can just
21 guess. Like a little like -- it can be like regular
22 size. A little above regular size I would say.

23 MR. TAGUCHI: Regular size glass and a glass being
24 eight ounces?

25 MR. BHATNAGAR: Yeah, something like that.

1 MR. TAGUCHI: And do you know how many shots of
2 tequila were in that?

3 MR. BHATNAGAR: No, I do not. Not to my knowledge.

4 MR. TAGUCHI: Okay.

5 MR. BHATNAGAR: It was just one drink I had. And
6 Mr. Campagna said, "You know, come on, won't hurt you,
7 and just have that marguerita."

8 MR. TAGUCHI: What time did you finish that? What
9 time did you finish the marguerita?

10 MR. BHATNAGAR: It was, I believe, quarter to 1:00,
11 something like that.

12 MR. TAGUCHI: Okay. And then when you -- after you
13 finished at a quarter to 1:00, what happened next?

14 MR. BHATNAGAR: We left because the restaurant was
15 going to close. We left right away. I dropped
16 Mr. Marcus Campagna, and I ran out of gas and --

17 MR. TAGUCHI: You dropped -- you dropped him off?
18 You drove him home?

19 MR. BHATNAGAR: Yes. He -- no. Actually, he drove
20 in his car. My car was in San Ramon where he lives. So
21 I picked up my car. And then when I turned my car keys
22 on, I was out of gas I noticed. So Mr. Campagna told me
23 that if you want I can follow you so that if you run out
24 of gas. Because I thought, oh, my god, you know, like
25 I'm out of gas. So I don't want to be stuck out. So he

1 offered. But I said, "No. I'll make it." Because I
2 have a small car, Nissan. I'll make it to the gas
3 station. Because I had gone to the gas station prior to
4 from his residence.

5 MR. TAGUCHI: Okay. How many times had you been to
6 his residence before this evening?

7 MR. BHATNAGAR: At least I would say four to five
8 times at least.

9 MR. TAGUCHI: So you initially went to his house.
10 You dropped your car off there. And the three of you
11 left from his house to the restaurant?

12 MR. BHATNAGAR: No. Just me and Marcus.

13 MR. TAGUCHI: Okay. You and Marcus. So you went to
14 the restaurant, and then he drove you back to the -- to
15 his house?

16 MR. BHATNAGAR: Yes.

17 MR. TAGUCHI: Okay. Then from there you left and you
18 knew that you were running low on gas so you needed to
19 stop?

20 MR. BHATNAGAR: I was very -- because I had gone to
21 his house before. I knew this gas station was pretty
22 close, so I'll make it to the gas station.

23 MR. TAGUCHI: Which gas station are you referring to?

24 MR. BHATNAGAR: Valero gas station.

25 MR. TAGUCHI: The one --

1 MR. BHATNAGAR: On --

2 MR. TAGUCHI: The one --

3 MR. BHATNAGAR: On Market.

4 MR. TAGUCHI: Okay.

5 MR. BHATNAGAR: On Market Street.

6 MR. TAGUCHI: The one that the police officer
7 testified to?

8 MR. BHATNAGAR: Yes.

9 MR. TAGUCHI: Now, how many times have you been to
10 that -- that gas station before?

11 MR. BHATNAGAR: I would say at least six to seven
12 times, maybe more, but at least six, seven times.

13 MR. TAGUCHI: That's the one identified in --

14 MR. BHATNAGAR: Yes.

15 MR. TAGUCHI: -- C?

16 MR. BHATNAGAR: I've gone there many times.

17 MR. TAGUCHI: Okay. When -- so what is the direction
18 or the route that you took from Mr. Campagna's house to
19 the gas station?

20 MR. BHATNAGAR: I was on Bollinger and I was going
21 towards -- towards the freeway and to the gas station.
22 That would be westbound, I believe. I'm -- I'm not sure
23 which direction is westbound.

24 MR. TAGUCHI: So you're heading towards the freeway.

25 MR. BHATNAGAR: Yeah.

1 MR. TAGUCHI: And showing you what has been marked as
2 **Exhibit A**, can you show Mr. Lee which way you were going?

3 MR. BHATNAGAR: Yes. I was going this way.

4 MR. TAGUCHI: Okay. And then where did you make a
5 left at?

6 MR. BHATNAGAR: I made a left at the intersection of
7 Market and Bollinger. Because it's a big intersection.
8 There are five lanes. And I've gone there. So it's very
9 open, big intersection. I was on the left lane. Number
10 two lane.

11 MR. TAGUCHI: And then showing you **Exhibit B**, this is
12 the intersection that you were at when you made a left
13 turn?

14 MR. BHATNAGAR: Yes. Yes.

15 MR. TAGUCHI: Now, there seems to be two left turn
16 lanes. Which one were you in?

17 MR. BHATNAGAR: I was in the number two lane.

18 MR. TAGUCHI: Okay. What's -- where it's depicted
19 the car on the right here?

20 MR. BHATNAGAR: Yes.

21 MR. TAGUCHI: In that lane?

22 MR. BHATNAGAR: Yes.

23 MR. TAGUCHI: Okay. Now, the police officer
24 testified that you went past the gas station. You went
25 to Bishop and then you made a U-turn onto Bishop. Is

1 that correct?

2 MR. BHATNAGAR: No.

3 MR. TAGUCHI: Okay. When you made a left turn
4 into -- onto Market --

5 MR. BHATNAGAR: Uh-hmm.

6 MR. TAGUCHI: -- what did you do next?

7 MR. BHATNAGAR: I was on the right-hand lane and I
8 turned right into the gas station.

9 MR. TAGUCHI: Okay. And where did you pull up into?

10 MR. BHATNAGAR: The gas station. I pulled up into
11 the gas station.

12 MR. TAGUCHI: Okay. Showing you what's been marked
13 as **Exhibit C**, where did you park in the gas station?

14 MR. BHATNAGAR: Right here.

15 MR. TAGUCHI: Where the car is depicted?

16 MR. BHATNAGAR: Yeah. Yes.

17 MR. TAGUCHI: That's the same area where --

18 MR. BHATNAGAR: Yeah.

19 MR. TAGUCHI: -- Mr. Ha first saw you?

20 MR. BHATNAGAR: Yes.

21 MR. TAGUCHI: Was there any police officers behind
22 you?

23 MR. BHATNAGAR: No.

24 MR. TAGUCHI: Did the police officer who testified
25 here before make contact with you at the driver's window?

1 MR. BHATNAGAR: No.

2 MR. TAGUCHI: Okay. So what did you do when you
3 first pulled up?

4 MR. BHATNAGAR: When I got out of the car, first I
5 was going to pay by credit card. I wasn't sure. But I
6 had some cash. So I was thinking it's better to use the
7 cash. I started walking towards the cashier. And there
8 was this girl. She approached me and she looked really
9 drunk. And she asked me like, "Do you have any money? I
10 just need some cigarettes." And all that stuff. And I
11 said, "I'm sorry," you know. And she was saying, "Oh,
12 you know, like you're not gay, right?" I mean I'm sorry.
13 You know, because she was good looking, but I don't care.
14 But I said, "I don't have any money. I'm sorry, I can't
15 help you." And then all of a sudden I saw like a police
16 officer approach me and ask me that --

17 MR. TAGUCHI: Did you see the police officer pull up
18 in the car?

19 MR. BHATNAGAR: No. I was talking to the girl, and
20 the police officer -- I wasn't sure the car was parked.
21 He stepped out. He kept walking. And then he walked
22 towards me.

23 MR. TAGUCHI: Where did you see the police car --

24 MR. BHATNAGAR: The police car was --

25 MR. TAGUCHI: -- stop?

1 MR. BHATNAGAR: -- was -- first when I saw it, it was
2 right across the other side of my direction. Opposite
3 direction on this side right here.

4 MR. TAGUCHI: And you're referring to C. And he was
5 in the -- he was in the --

6 MR. BHATNAGAR: Number -- if I'm looking at it --

7 MR. TAGUCHI: -- other driveway?

8 MR. BHATNAGAR: -- it's number three. Yeah, right
9 here.

10 MR. TAGUCHI: So he's parked in front of three?

11 MR. BHATNAGAR: Yeah, number three. And I was --

12 MR. TAGUCHI: Facing which direction, towards you or
13 away from you?

14 MR. BHATNAGAR: Towards me.

15 MR. TAGUCHI: Okay. And did you see the police
16 officer here that testified? Is that the same person
17 we're talking about?

18 MR. BHATNAGAR: The same person, yes.

19 MR. TAGUCHI: Okay. Did you see him get out of the
20 patrol car, or where did you first see him?

21 MR. BHATNAGAR: Actually, I don't -- I -- I don't
22 believe see him come out of the car first. He was
23 already out when I was talking to the girl. And then
24 he --

25 MR. TAGUCHI: Which direction were you facing when

1 you were talking -- when this girl was talking to you?

2 MR. BHATNAGAR: There was some other -- there was
3 another police officer who started walking towards the
4 girl because the girl looked really drunk. And she also
5 asked him -- I mean I'm not sure, but she was also asking
6 them money. And this officer saw my contact lenses and
7 my eyes were -- were very watery because of these contact
8 lenses. Those were the only --

9 MR. TAGUCHI: My question is, which direction were
10 you facing when you were talking to this girl?

11 MR. BHATNAGAR: I was facing towards the cashier.

12 MR. TAGUCHI: Based on -- okay.

13 MR. BHATNAGAR: Towards the cashier.

14 MR. TAGUCHI: Okay. So the police officer was behind
15 you when they first pulled up?

16 MR. BHATNAGAR: Yeah. He was -- the other police
17 officer wanted to talk to the girl, and then he -- they
18 approached me there.

19 MR. TAGUCHI: Okay.

20 MR. BHATNAGAR: They looked at me.

21 MR. TAGUCHI: Did he -- did the officer put on his
22 red light?

23 MR. BHATNAGAR: No, there was no lights on.

24 MR. TAGUCHI: So he just walked up to you?

25 MR. BHATNAGAR: Yeah. He said, "There's a bar right

1 across and your eyes are pretty red, you know. You had
2 any drinks at that bar?" And I said, "No." And, "You
3 had any alcoholic beverages?" And I -- I believe in
4 honesty. I had alcoholic beverage, so I told him, yes, I
5 had. And he said, "Okay. Then just step -- you know,
6 you need to just come to the side." And made me walk
7 from here and made me do the test later.

8 MR. TAGUCHI: So he -- you were in front of your car
9 when he told you to come here?

10 MR. BHATNAGAR: He made me walk here, right here in
11 this area. I was standing here.

12 MR. TAGUCHI: By the cash register?

13 MR. BHATNAGAR: Yeah. Actually, we were not inside
14 the store. We were right outside the door. And the girl
15 was there. And then he made walk here and made me do
16 the --

17 MR. TAGUCHI: Did you see Richard Ha?

18 MR. BHATNAGAR: Yes. Yes.

19 MR. TAGUCHI: And where was he?

20 MR. BHATNAGAR: He was standing right here.

21 MR. TAGUCHI: Did you have any conversation with him
22 that evening?

23 MR. BHATNAGAR: Who, me? No. I have no idea of
24 Mr. Ha.

25 MR. TAGUCHI: Right.

1 MR. BHATNAGAR: I mean I didn't knew him, you know.

2 MR. TAGUCHI: So -- so the police officer had you do
3 some of those tests that he -- those sobriety tests?

4 MR. BHATNAGAR: Yes. Yes.

5 MR. TAGUCHI: And how did you perform on them?

6 MR. BHATNAGAR: I believed in all honesty that I did
7 really good. I was listening to him very carefully. He
8 made me do (inaudible). He made walk around, turn
9 around, turn -- touch my nose, alphabetically say this
10 and that, and I just followed each and every thing.

11 MR. TAGUCHI: So, to your knowledge, did he see you
12 pull up in the parking lot?

13 MR. BHATNAGAR: No. He -- I'm pretty sure he didn't
14 see me pull up because it was at least -- at least -- if
15 you count one, two -- one minute, sixty seconds, it was
16 at least two to three minutes he came later, after that
17 timeframe. And usually -- what I believe is why he came
18 because the girl who was there, she looked really drunk,
19 and the other police officer had approached that girl.
20 But I have no knowledge what -- what they did to the
21 girl.

22 MR. TAGUCHI: Okay. He also testified that, you
23 know, you made a right -- a U-turn at Bishop Canyon and
24 then made a right turn and cut in front of him.

25 MR. BHATNAGAR: No, no, no, no. There was -- how can

1 I -- how can I cut him? Because I turned left. And I
2 was only driving 35 miles an hour. And I been to this
3 gas station many times. And I had to get to the gas.

4 MR. TAGUCHI: And he -- and he also --

5 MR. BHATNAGAR: Doesn't make any sense to go make --
6 go forward and make a U-turn to get to the gas station.

7 MR. TAGUCHI: He said he pulled up right behind you
8 and put the red light on.

9 MR. BHATNAGAR: No, no, no. Was not at all. Because
10 I was at the gas station already when he approached me
11 later.

12 MR. TAGUCHI: Well, he also said when he -- he
13 approached -- when he first approached you that you were
14 inside -- you were inside the -- the car. I mean --

15 MR. BHATNAGAR: No, no. I was --

16 MR. TAGUCHI: -- it says so written in his police
17 report.

18 MR. BHATNAGAR: No. I was not inside the car. I was
19 already outside the car. I mean I have nothing to -- I
20 mean that's a fact. I was outside the car.

21 MR. TAGUCHI: And how long were you outside the
22 car -- or how long had you been at the gas station before
23 the police officer pulled up?

24 MR. BHATNAGAR: I didn't see him pull up. But I
25 would say when I first saw the police officer it was at

1 least two to five minutes frame, you know, something like
2 that.

3 MR. TAGUCHI: Okay. Now, you say there's some bar
4 across the street that --

5 MR. BHATNAGAR: Yes.

6 MR. TAGUCHI: -- Mr. Ha testified to as well?

7 MR. BHATNAGAR: Yes. And prior I had no knowledge
8 that there was a bar across that gas station.

9 MR. TAGUCHI: Okay. So when -- so after you did
10 field sobriety tests, what happened next?

11 MR. BHATNAGAR: He made me blow on something
12 that's -- I've never been arrested and I never
13 experienced this kind of thing. He made me blow on
14 something many times. And I had sore throat and I had
15 lot of cough syrup. And he said, "Keep blowing. Keep
16 blowing." And he was getting upset that, "Are you weak,
17 or your lungs are weak or something?" I said, "I'm
18 sorry, Officer. You want me to blow again in it, I will
19 blow it." So I kept on blowing in it.

20 MR. TAGUCHI: And what happened? How many -- about
21 how many times did he want you to blow into this thing?

22 MR. BHATNAGAR: I at least blow in four to five times
23 at least in that device, whatever he made me do.

24 MR. TAGUCHI: Okay. After you -- you blew into this
25 device, what happened next?

1 MR. BHATNAGAR: He said, "You're at the bottom line
2 and I have to arrest you. And just put your hands behind
3 and that's it."

4 MR. TAGUCHI: And what --

5 MR. BHATNAGAR: And he just handcuffed me and took me
6 to the car.

7 MR. TAGUCHI: Okay. And what happened next?

8 MR. BHATNAGAR: He took me to the police station, and
9 I was crying, you know, to be very frank. And I'm sorry.
10 When I think about it, I get stressed, but I'll try to
11 control my emotions.

12 MR. TAGUCHI: Okay. Now, Laurie Garrison, when did
13 you first talk to her that evening?

14 MR. BHATNAGAR: That evening I talked to prior,
15 before going to the restaurant to -- to Laurie Garrison.
16 Because I was in touch with her. I don't -- I was trying
17 to call everybody to find me a job, too. Which I told
18 her not to tell anybody else, but I'm trying to get a
19 job. So I requested her. So I was in touch with her too
20 that evening.

21 MR. TAGUCHI: And when did you first call her after
22 you made -- after the police made contact with you?

23 MR. BHATNAGAR: To my knowledge, I was heavily
24 nervous. I called from my cell phone when I was at the
25 police station around two o'clock from my cell phone.

1 MR. TAGUCHI: What happened next when you -- when you
2 were -- you said you were crying or upset and --

3 MR. BHATNAGAR: I was -- I was very upset because the
4 way I felt like I was -- I was really scared. I was
5 really nervous. I thought I'd be beaten up. I was just
6 trying to take it easy, you know.

7 MR. TAGUCHI: So what -- what did the police officer
8 say, you know, when you were talking to Ms. --

9 HEARING OFFICER LEE: Counsel, let me get some
10 tissues. I'll be right back.

11 MR. BHATNAGAR: I'm sorry.

12 (Off the record.)

13 HEARING OFFICER LEE: Okay. We're back on record. I
14 just paused to get some tissues.

15 MR. BHATNAGAR: Thank you. Thank you, sir. All I
16 remember very clearly that I was crying and I was upset.
17 And one of my family member was also kind of sick and in
18 her last stage. And he said, "It's only misdemeanor.
19 You look like a terrorist. I'm not going to charge you
20 for that."

21 MR. TAGUCHI: He said you look like a terrorist but
22 he's not charging you with that?

23 MR. BHATNAGAR: Yeah.

24 MR. TAGUCHI: What else did he tell you that was
25 derogatory?

1 MR. BHATNAGAR: Then I was talking to Mr. Campagna,
2 and by mistake my phone had turned on speaker phone on
3 two, you know. I was requesting him if he can help me
4 out and pick me up later. Because it was my dad's car.
5 And he got really upset, too. And he -- he also said,
6 "You know, you Asians create a lot of trouble all over
7 the world." Because he did not -- he did ask -- I mean
8 he asked my driver's license number and every
9 information. That he said, "What background are you?"
10 And I told him, "I'm Indian, you know." And then he
11 said, "You come and take jobs here and then you're
12 crying, you know. You take people's livelihood and then
13 you're crying. Be a man and just face it."

14 MR. TAGUCHI: Any other derogatory comments that he
15 made to you during that evening?

16 MR. BHATNAGAR: I was really -- I was trying to block
17 it. These two things are very clear in my head. But at
18 that time I was just trying to get through it and just
19 follow him whatever he was telling me. And he was
20 telling me, "Okay." He was -- he wanted me to take the
21 breath one at the police station. And then he -- I
22 requested, "I don't mind taking the blood one." And he
23 said, "No. It'll make you wait longer." And he -- I
24 still remember he talked to someone and said, "I don't
25 want to come right now. I want to delay and wait for

1 this guy to -- around certain time to take his blood."

2 MR. TAGUCHI: So he intentionally delayed your --

3 MR. BHATNAGAR: Yeah.

4 MR. TAGUCHI: -- your taking blood?

5 MR. BHATNAGAR: I had no idea, but I realize it now.

6 I had no idea at that time why. Because I was telling
7 him, you know, "Whatever you want to do, I'm ready to do,
8 you know, to do the testing." He said blood is -- is
9 this and this and this, and I will make you wait, and
10 that's it.

11 MR. TAGUCHI: Since we've been here -- since we've
12 been here, when he's testified, have you come into
13 contact with the same officer who testified against you
14 at this hearing?

15 MR. BHATNAGAR: Uh-hmm. Yes.

16 HEARING OFFICER LEE: Yes.

17 MR. TAGUCHI: Okay. In what circumstance was it that
18 he came into contact with you?

19 MR. BHATNAGAR: I --

20 MR. TAGUCHI: Or where were you? Let me ask you that
21 first.

22 MR. BHATNAGAR: Yes. I had gone to the gas station
23 again to meet Mr. Richard Ha to give him a subpoena
24 from -- because I don't have money to get attorney. I
25 have a public defender. And public defender's detective

1 has faxed me the subpoena on Richard Ha's name.

2 Mr. Ha was very scared. He didn't want to go
3 anywhere. Same with Laurie Garrison. Same with Marcus
4 Campagna. And which Mr. Ha had told me another thing
5 personally, too, but I will tell that later.

6 I had gone to tell Mr. Ha that just give the facts.
7 This is a subpoena. You have to go to court.

8 MR. TAGUCHI: What was the date of that?

9 MR. BHATNAGAR: That was September 29th, I believe.
10 Something like that. When I go -- when I received the
11 fax. I mean he gave it to me. And then I showed him the
12 subpoena and I said, "The public defender office will be
13 contacting you for court."

14 MR. TAGUCHI: Okay. So you -- you went back to this
15 gas station to give him a subpoena?

16 MR. BHATNAGAR: Yes. Yes.

17 MR. TAGUCHI: Okay. And tell him about the court
18 date that --

19 MR. BHATNAGAR: Yes. And --

20 MR. TAGUCHI: -- he was going to testify to?

21 MR. BHATNAGAR: Yeah. And also told him that
22 detective would be giving him in person subpoena.

23 MR. TAGUCHI: Okay. And then --

24 MR. BHATNAGAR: We wanted his DMV number and his date
25 of birth and his address. So that's why I had gone to

1 meet Richard Ha because he worked in that graveyard time.
2 And after that I got out of the car. I drove -- I
3 followed all the -- because I know I was scared. I saw
4 like someone kept following me for almost one mile again.

5 MR. TAGUCHI: On -- on what street?

6 MR. BHATNAGAR: Same with the gas station on Market.

7 MR. TAGUCHI: Okay.

8 MR. BHATNAGAR: It was a police officer right behind
9 me. I turned left to get to the freeway --

10 MR. TAGUCHI: Okay.

11 MR. BHATNAGAR: -- on Bollinger. Getting to the
12 freeway and almost -- at least half a mile, I believe, at
13 least I'm sure, and then this cop turned his lights on
14 again, pulled me over to the side street and he pulled me
15 over and guess what, it's the same police officer. And
16 he says -- sir, excuse my language. He says, "What the
17 fuck you doing in San Ramon? I don't want you to see in
18 San Ramon, you know. Whatever attorneys you get, I can
19 take you to jail any time, beat your ass up."

20 And I said, "I'm -- I'm sorry. What have I done?
21 I'm just" -- you know, like tell me have I done anything
22 wrong right now. Like I'm -- you know, if you want to do
23 any testing, I'll do it again. And he said, "No, no, no.
24 Just show me your" -- this time like prior he had not
25 asked my insurance papers.

1 MR. TAGUCHI: Uh-hmm.

2 MR. BHATNAGAR: This time he asked my insurance
3 papers, which I had. I show it to him. He asked my
4 license, which I had shown him the temporary license
5 which I have from the DMV office. And he knew
6 everything, but he asked everything. And he said, you
7 know, "I don't want you to see in San Ramon." And then
8 he gave me a ticket again for making a U-turn again, and
9 I made no U-turn.

10 MR. TAGUCHI: Showing you a copy of what I have
11 marked next in order. Is this a copy of the ticket that
12 he gave to you that night --

13 MR. BHATNAGAR: Yeah.

14 MR. TAGUCHI: -- for making a U-turn when you --

15 MR. BHATNAGAR: Same -- yeah.

16 MR. TAGUCHI: -- you never made a U-turn that
17 evening?

18 MR. BHATNAGAR: Yeah. I never made a U-turn. Right
19 at the same place. And after going through all this, you
20 know. And he's saying I made an illegal U. I didn't --
21 I didn't argue with him. I just -- I just walked away.
22 Because there was no point. There was no point in, you
23 know, arguing with him.

24 MR. TAGUCHI: That's unbelievable.

25 MR. BHATNAGAR: And he was upset because I believe

1 the public defender, I don't know the legal term, did
2 some kind of on his background, like Pitchess motion,
3 and --

4 MR. TAGUCHI: Is that -- and that's his name at the
5 bottom of the -- that ticket?

6 MR. BHATNAGAR: Yes.

7 MR. TAGUCHI: And what -- what -- what's the date of
8 the ticket?

9 MR. BHATNAGAR: The date of the ticket, it says
10 29th September.

11 MR. TAGUCHI: So you -- you left from the gas
12 station --

13 MR. BHATNAGAR: Same time.

14 MR. TAGUCHI: -- down Bollinger Canyon, and so there
15 was no way that you were making a U-turn anywhere?

16 MR. BHATNAGAR: Yeah. No. I had not. Because what
17 I did was I got out of the gas station. I turned left.
18 There is a bar. There's something. Everything. And
19 then I got to the parking lot. Because I was very
20 careful. Then I turned. Then I turned right. And then
21 I turned left at the traffic light to go on some
22 freeways.

23 MR. TAGUCHI: And mark this and put it into evidence
24 and show it to Mr. Lee.

25 HEARING OFFICER LEE: H, I. **Exhibit J.**

1 (Licensee's Exhibit J marked for identification.)

2 MR. TAGUCHI: So he literally threatened you to stay
3 out of San Ramon?

4 MR. BHATNAGAR: Yes. I think he saw me talking to
5 Mr. Ha and he got upset. Because he patrols in that
6 location, and we were standing outside when I was
7 explaining the subpoena. Probably he got upset me
8 talking to Mr. Ha explaining him the subpoena. And he
9 also looked in the car with his light, you know, like he
10 knew that I had file folder.

11 MR. TAGUCHI: All right. I have nothing further.

12 HEARING OFFICER LEE: Okay. Mr. Bhatnagar, I know
13 that he asked these questions, but I'm not sure if I got
14 an answer. What time did you start drinking the -- the
15 Budweiser, the Bud Lite?

16 MR. BHATNAGAR: I believe, sir, it was around 11:145

17 MR. TAGUCHI: P.M.?

18 MR. BHATNAGAR: P.M., yes.

19 MR. TAGUCHI: What time did you finish the Bud Lite?

20 MR. BHATNAGAR: I believe it was 12:30. I was
21 drinking slowly with the food

22 MR. TAGUCHI: 12:30 a.m.?

23 MR. BHATNAGAR: Yes.

24 MR. TAGUCHI: What time did you start the marguerita,
25 then?

1 MR. BHATNAGAR: It was really like around 12:15.
2 They have other marguerita, but, you know, I was sipping
3 marguerita along with Budweiser a little bit. But I was
4 drinking -- I don't drink, you know, usually. Marguerita
5 I start around 12:15.

6 MR. TAGUCHI: So you had two drinks at the same time?

7 MR. BHATNAGAR: Yes. My Bud -- my -- my Budweiser
8 was almost done around 12:15, but it was almost -- almost
9 finished, and Mr. Campagna ordered a marguerita for me.

10 MR. TAGUCHI: Okay. And what time did you finish the
11 marguerita?

12 MR. BHATNAGAR: I believe it was quarter to 1:00.
13 Because the restaurant was getting closed and -- and I
14 finished the drink and I left.

15 MR. TAGUCHI: Okay. What was your dessert?

16 MR. BHATNAGAR: I don't remember, but I can try to
17 contact the restaurant to get the receipt. And if I
18 can't get that, I'll -- if you want that information,
19 then I'll give it to you. But I had a decent size meal,
20 no doubt.

21 MR. TAGUCHI: When did you first call Ms. Garrison?

22 MR. BHATNAGAR: That -- that evening or you're
23 talking about --

24 MR. TAGUCHI: Yeah. (Inaudible.)

25 MR. TAGUCHI: That evening the first -- first time.

1 MR. BHATNAGAR: I believe I spoke to her earlier,
2 too, before this whole scene. You know, I did talk to
3 her around 11:00 or -- you know, I can check my cell
4 phone records, because I did talk to her earlier, too.

5 MR. TAGUCHI: So --

6 MR. BHATNAGAR: I did tell her that I'm going to see,
7 you know, someone. I didn't tell the names, but I -- I
8 hope I get a job, you know.

9 MR. TAGUCHI: So you called her, or she called you
10 around 11:00?

11 MR. BHATNAGAR: I don't (inaudible) that. I don't
12 recollect that. (Inaudible.)

13 MR. TAGUCHI: But you do remember calling her while
14 you're in custody?

15 MR. BHATNAGAR: Yes. Yes.

16 MR. TAGUCHI: Okay.

17 MR. BHATNAGAR: I do call her. And I do remember
18 very clearly that Mr. Campagna had called me first, and I
19 spoke to Mr. Campagna at least twice that I'm remembering
20 (inaudible). At least twice I spoke to Mr. Campagna.
21 But Ms. Garrison I only spoke once at the -- at the
22 police station, to my recollection.

23 MR. TAGUCHI: Where were you around eleven o'clock
24 p.m.?

25 MR. BHATNAGAR: Eleven o'clock I was heading towards

1 Mr. -- I wasn't sure (inaudible) I was going to meet
2 Mr. Campagna. And it was hard to get a hold of
3 Mr. Campagna. And I was a little sick that day. And I
4 said I want to meet him so that any job openings is
5 there, you have to try right away. And I told
6 Mr. Campagna, and he said he has time that evening. And
7 I said, okay, I'll try to meet him. So I probably was on
8 my way from my place to -- to his place.

9 MR. TAGUCHI: Okay.

10 MR. BHATNAGAR: So it was all of a sudden plan. It
11 was not like for sure.

12 MR. TAGUCHI: Okay. So when did you start dinner?

13 MR. BHATNAGAR: I started dinner -- we ordered dinner
14 first, actually. Then the drinks later. Now I remember.
15 Because we ordered the drink -- because they wanted us to
16 order the food first before the kitchen gets closed, or
17 something like that. Whereas the -- the bar -- they
18 had -- the restaurant which I went, they had a section of
19 bar, too.

20 MR. TAGUCHI: Okay. So when did the --

21 MR. BHATNAGAR: But we were -- we were sitting on the
22 table. We were not in the bar section. So the server
23 wanted us to order the food.

24 MR. TAGUCHI: When did the food come?

25 MR. BHATNAGAR: The food, I believe around -- around

1 like within 20 minutes. We ordered 11:30. Twelve --
2 around twelve o'clock at least. By 12:00 we had dinner
3 on the table.

4 MR. TAGUCHI: Okay. So you came at 12:00 midnight?

5 MR. BHATNAGAR: Yeah, approximately. A little before
6 than that.

7 MR. TAGUCHI: Okay. Thank you, sir.

8 MR. BHATNAGAR: Can I say something or --

9 MR. TAGUCHI: Counsel, is it okay?

10 MR. TAGUCHI: Well, why don't you tell me first.

11 MR. BHATNAGAR: That's okay. I believe --

12 MR. TAGUCHI: Well, (inaudible).

13 HEARING OFFICER LEE: I can -- let me -- let me take
14 a brief recess. You confer. And I'll be right back.

15 (Off the record.)

16 HEARING OFFICER LEE: Counsel, we're back on record.

17 MR. TAGUCHI: Yeah. We have nothing further.

18 HEARING OFFICER LEE: Okay. Counsel, you wish to
19 make a closing?

20 MR. TAGUCHI: Yes. The DMV has the standard of
21 preponderance of evidence to prove several issues at this
22 hearing. One is did the peace officer have reasonable
23 cause to believe that he was driving a motor vehicle
24 under the influence. Okay?

25 Here you have a number of problems with the police

1 officer's credibility. I mean it's just written all over
2 the place. Testified by an independent stranger,
3 independent witness who's a stranger to Mr. Bhatnagar,
4 who is scared, who's been -- you know, English is his
5 second language, who has completely contradicted what the
6 police officer said about how the stop took place.

7 The police officer who -- who says that he saw
8 Mr. Bhatnagar make an illegal U-turn at Bishop, first,
9 you can't even make a left turn there, but of course you
10 can make a left turn there, says that he made a U-turn
11 there at Bishop, followed him, and then abruptly changed
12 lanes and then went into -- and cut in front of him,
13 which makes absolutely no sense whatsoever, and then goes
14 into this gas station.

15 The test -- the officer specifically testified,
16 specifically testified, based on my questioning, that he
17 pulled in right behind him and put on his red lights and
18 contacted Mr. Bhatnagar at the -- his driver window. But
19 based on a completely independent witness who had -- who
20 witnessed the entire event, who was there, testified that
21 these police officers, they're there all the time. Okay?
22 They're around that particular intersection.

23 And that Mr. Bhatnagar and he's been -- was there for
24 about two to three minutes before the police officer even
25 pulled up. And the police officer didn't pull up behind

1 him. He pulled up in the other driveway of the pump.
2 Not only he didn't pull in the same direction. He pulled
3 in the opposite direction. Okay?

4 Was there a red light on? No, there was no red light
5 on. There was another third woman there who was --
6 clearly that was drunk at the time that the police
7 officer initially approached. And then, you know, oh,
8 sir, have you been drinking? Completely, you know, no
9 reason to believe that -- first of all, he didn't see him
10 driving. And under People versus Musak, if the police
11 officer sees no driving, then there can be no lawful
12 arrest.

13 Says -- you know, Abhi says, "Yeah, I had something
14 to drink." Well, then come over here and let's start
15 taking -- taking some tests. Assuming that, you know,
16 he's driving the car. So he gives him the tests and --
17 and he feels that -- you know, the officer says, "Well,
18 you're under the influence. I'm taking you in." Arrests
19 him. And he's completely belligerent, completely racist,
20 completely unprofessional conduct.

21 You know, he -- obviously he denies it, but we
22 have -- we have two witnesses. One, the statement
23 declared under the penalty of perjury. One by a U.S. Air
24 Force Reservist, who's testified that -- who was
25 completely shocked about, you know, Asians, you know,

1 taking up jobs and, you know, you're a terrorist. And I
2 mean that is just unbelievable.

3 And hearing something like that, you know, you want
4 to believe that these, you know, police officers, you
5 know, are -- are -- maintain a certain integrity. But
6 obviously this guy doesn't.

7 When Abhi came to me and said, "You won't believe
8 what happened to me. That when I went to go see -- you
9 know, go see -- give a subpoena to Mr. Ha, this cop
10 followed me down the road for an hour, and then pulled me
11 over on some side street and told me never go to San --
12 San Ramon again." I mean -- and then gave him a ticket
13 for -- the same ticket that he's alleging that -- you
14 know, making an illegal U-turn here. That is -- that is
15 police harassment. I don't -- I've never had a case
16 presented to the DMV where the evidence is so clear of
17 how abusive that this police officer was to an
18 individual.

19 There was no reasonable cause to believe that he was
20 driving a motor vehicle under the influence. And
21 clearly, he was illegally arrested based on the testimony
22 of an independent witness who has -- you know, who has
23 nothing to -- nothing to gain by testifying either way.
24 As a matter of fact, he's scared. He was scared to come
25 here. Corroborated not only by Mr. -- you know,

1 Mr. Bhatnagar, but also some of the things that this
2 officer said by a friend who was able to overhear on a
3 cell phone during some of the communications that they
4 had that evening.

5 And also regarding the blood, you know, he -- he --
6 from finishing his drink to the time that he was actually
7 at that gas station, I mean there's no way that the blood
8 could have -- the alcohol could have absorbed in his
9 blood at that time to reach a .08.

10 Now, there's some evidence saying that, well, the --
11 you know, he waited. Well, you know, if this -- if -- if
12 the officer's saying that he made contact with him at
13 1:08, and then he had a blood test an hour and a half
14 later saying he's -- wants to make him late, that doesn't
15 make sense. Why would he first take him over to the
16 police station?

17 Usually -- you've been doing this long enough. You
18 know when a person asks for a blood test that they just
19 take them right over to the -- take them over to the --
20 the hospital to draw the blood. They don't first take
21 them over to the jail and then take them over there. So
22 there's something very odd going here as far as why they
23 waited so incredibly long to administer this blood test.

24 And then he writes in his report that he uses kit
25 number 24664. And then we see it's 34644. You know,

1 it's just another -- is it an innocent mistake, or is --
2 you know, what is really going on with this particular
3 officer, especially in light of this harassment that he's
4 showing to him?

5 Can you believe that? After he testifies in here,
6 follows him, sees -- probably sees him at this gas
7 station. Follows him. Pulls him over on a side street
8 in the middle of the night telling him don't ever come --
9 what police officer tells you -- I mean we live in a free
10 country. What police officer tells you don't show --
11 don't go to a particular city? Because he's challenging,
12 you know, his arrest for a DUI. I mean that is just
13 insane.

14 There's -- you know, clearly there's -- there's not
15 enough evidence to -- to support a finding in this case.

16 HEARING OFFICER LEE: Counsel, you wish to submit on
17 that?

18 MR. TAGUCHI: Yes.

19 HEARING OFFICER LEE: Mr. Bhatnagar, there's so much
20 information today, I have to take some time to deliberate
21 and review all the information once more. I'll notify
22 you of my decision and a copy to counsel within the next
23 30 days of today's date by mail.

24 MR. BHATNAGAR: Okay.

25 HEARING OFFICER LEE: Thank you. Thank you, counsel.

1 TRANSSCRIBER'S CERTIFICATE

2 STATE OF CALIFORNIA

3 COUNTY OF YOLO

4 I, Leisa M. Miller, Vine, McKinnon & Hall,
5 2959 Promenade Street, Suite 200, West Sacramento,
6 California, 95691, hereby certify that I transcribed the
7 foregoing pages to the best of my ability from an
8 electronic recording taken at the hearing in the matter
9 of the driving privilege of:

10 Abhinav Bhatnagar

11 36927 Papaya Street, Newark, CA 94560

12 before a Board of Officers or employee of the Department
13 of Motor Vehicles, consisting of:

14 Hearing Officer Leland Lee

15 on the 26th of July and 11th of October, 2006, at

16 Department of Motor Vehicles

17 303 Hegenberger Road, Suite 400

18 Oakland, CA 94621

19 I declare under penalty of perjury under the laws of
20 State of California that the foregoing is true and
21 correct.

22 Executed this 22nd day of October, 2007, Sacramento,
23 California.

24 
25 Leisa M. Miller